

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION  
4  
5

        IN RE NATIONAL PRESCRIPTION     | Case No. 17-MD-2804  
6   |  
        OPIATE LITIGATION                 | Hon. Dan A. Polster  
7   |  
        APPLIES TO ALL CASES             |

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9                                     - - -  
10                   Thursday, November 15, 2018  
11                                     - - -  
12

        HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
13  
        CONFIDENTIALITY REVIEW  
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15  
16  
17

        Videotaped deposition of JEFF ABERNATHY,  
18       held at the offices of Mitchell Williams,  
        4206 South J.B. Hunt Drive, Suite 200, Rogers,  
19       Arkansas, commencing at 9:37 a.m., on the above  
        date, before Susan D. Wasilewski, Registered  
20       Professional Reporter, Certified Realtime  
        Reporter and Certified Realtime Captioner.  
21  
22

23                                     - - -  
24                   GOLKOW LITIGATION SERVICES  
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<p>1 EXHIBITS</p> <p>2 (Attached to transcript)</p> <p>3 JEFF ABERNATHY DEPOSITION EXHIBITS PAGE</p> <p>4</p> <p>5 Walmart- E-mail - Subject: Control Flow 247</p> <p>6 Abernathy WMT_MDL_000034546 and 34547</p> <p>7 Exhibit 26</p> <p>8</p> <p>9 Walmart- Drug Diversion Review Documents 261</p> <p>10 Abernathy WMT_MDL_000045963 through 46007</p> <p>11 Exhibit 27</p> <p>12</p> <p>13 Walmart- Walmart Inc.'s Amended and 257</p> <p>14 Abernathy Supplemental Objections and</p> <p>15 Exhibit 28 Responses to Plaintiffs' First Set</p> <p>16 of Interrogatories to Wal-Mart Inc.</p> <p>17 Walmart- E-mail - Subject: WV call follow up 269</p> <p>18 Abernathy WMT_MDL_000011626 through 11629</p> <p>19 Exhibit 29</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. Good morning, Mr. Abernathy. How are you</p> <p>2 today?</p> <p>3 A. Good.</p> <p>4 Q. Thank you for being here. We appreciate it.</p> <p>5 A. Thank you.</p> <p>6 Q. Have you ever been deposed before?</p> <p>7 A. No, sir.</p> <p>8 Q. No, sir. So just -- before we get started,</p> <p>9 let me go over a few important rules. I think the</p> <p>10 most important of which is make sure you understand</p> <p>11 my questions. So I would ask that at any point</p> <p>12 during the day you don't understand the question,</p> <p>13 will you let me know and I'll try to rephrase so you</p> <p>14 understand it.</p> <p>15 Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. And if you don't ask me, if you don't let me</p> <p>18 know, I'll expect that you do understand the</p> <p>19 question.</p> <p>20 A. Okay.</p> <p>21 Q. Okay? And perhaps the most other important</p> <p>22 rule is that you do not answer with a shaking your</p> <p>23 head or a nod. You must answer verbally yes or no.</p> <p>24 Okay?</p> <p>25 A. Yes, sir.</p>

<p style="text-align: right;">Page 10</p> <p>1 MR. MAZZA: Mr. Bower, can I ask, are we --</p> <p>2 are we going to enter our appearances on the</p> <p>3 record?</p> <p>4 THE COURT REPORTER: They'll be noted on the</p> <p>5 stenographic record.</p> <p>6 MR. MAZZA: Okay. Thanks.</p> <p>7 BY MR. BOWER:</p> <p>8 Q. Mr. Abernathy, you understand you're under</p> <p>9 oath today, correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Are you taking any medication or is</p> <p>12 there any other reason that would interfere with</p> <p>13 your ability to testify truthfully today?</p> <p>14 A. No.</p> <p>15 Q. Okay. Have you ever testified in any other</p> <p>16 type of legal proceeding other than a deposition?</p> <p>17 A. No.</p> <p>18 Q. How did you prepare for today's deposition?</p> <p>19 A. I met with some Walmart legal people and</p> <p>20 some outside counsel this week.</p> <p>21 Q. Who did you meet with at Walmart?</p> <p>22 A. Paul was there. There were some other --</p> <p>23 other guys that came in and out. I don't -- I don't</p> <p>24 know who they were.</p> <p>25 Q. Okay. Approximately how many people did you</p>	<p style="text-align: right;">Page 12</p> <p>1 there is a dispute about that, and you've been in</p> <p>2 communication with Ms. Fulmerton from our office.</p> <p>3 But I can represent that all the documents that</p> <p>4 Mr. Abernathy reviewed have been produced.</p> <p>5 MR. BOWER: Okay.</p> <p>6 BY MR. BOWER:</p> <p>7 Q. And when did you meet with outside counsel?</p> <p>8 A. During the same time.</p> <p>9 Q. Same time. Was outside counsel present for</p> <p>10 all those meetings?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Other than the attorneys that sit here</p> <p>13 today, any other outside counsel that was present?</p> <p>14 A. There were some other outside counsel that,</p> <p>15 like I said, they came in and out as well.</p> <p>16 Q. Okay. So the folks who came out -- in and</p> <p>17 out were outside counsel or Walmart counsel?</p> <p>18 A. They were both.</p> <p>19 Q. Okay. Do you know the names of any of those</p> <p>20 folks?</p> <p>21 A. One of them, her name was Tina.</p> <p>22 Q. Okay. Any other names you recall?</p> <p>23 A. No, sir.</p> <p>24 Q. Can you briefly describe for us your</p> <p>25 education post high school?</p>
<p style="text-align: right;">Page 11</p> <p>1 meet with?</p> <p>2 A. There was probably five or six people in</p> <p>3 there, most of the day.</p> <p>4 Q. Okay. Were they all attorneys, do you know?</p> <p>5 A. I believe they were.</p> <p>6 Q. Do you know whether they were or not?</p> <p>7 A. I don't know that they were. I -- I just --</p> <p>8 I assumed they were. They were counsel, is what</p> <p>9 they said, so --</p> <p>10 Q. About how long did you meet with them?</p> <p>11 A. We met about probably six hours on Tuesday</p> <p>12 and about the same amount of time on Wednesday.</p> <p>13 Q. Did you review any documents during these</p> <p>14 meetings?</p> <p>15 A. I saw a few documents.</p> <p>16 Q. Did any of those documents refresh your</p> <p>17 recollection for today's testimony?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you know whether all of those documents</p> <p>20 have been produced in this litigation?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you understand that to the extent that</p> <p>23 those documents were not produced, you should have</p> <p>24 brought them with you here today?</p> <p>25 MR. MAZZA: I object. I understand that</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I have a bachelor's degree in finance from</p> <p>2 the University of Louisiana at Monroe.</p> <p>3 Q. What year did you graduate?</p> <p>4 A. 1997.</p> <p>5 Q. Since 1997, have you received any other</p> <p>6 educational -- formal educational training?</p> <p>7 A. No.</p> <p>8 Q. Have you received any training in your</p> <p>9 lifetime regarding suspicious order monitoring for</p> <p>10 controlled substances?</p> <p>11 A. I have received training, you know, just</p> <p>12 on-the-job training and those types of things.</p> <p>13 Q. Well, when you say "training," what are you</p> <p>14 referring to, other than on-the-job training?</p> <p>15 A. Just people showing me, "This is what you</p> <p>16 should look for, these are the things that we look</p> <p>17 for," then just the policies and procedures that we</p> <p>18 have at the DC, following those, and those types of</p> <p>19 things.</p> <p>20 Q. And when you say "at the DC," you're</p> <p>21 referring to DC6045?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. So you graduated from college in</p> <p>24 1997, correct?</p> <p>25 A. Yes, sir.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. And then can you describe your job history</p> <p>2 post graduating from college?</p> <p>3 A. So I became an assistant manager in Walmart</p> <p>4 stores in 1997. I then moved to the -- to the home</p> <p>5 office in Bentonville in 2000 and took a job at --</p> <p>6 with internal audit.</p> <p>7 Then in 2006, I took the role as the</p> <p>8 operations manager for the returns process at 6045.</p> <p>9 And in 2007, I moved over to become an</p> <p>10 operations manager for the C2 -- the C2 side of the</p> <p>11 business, the C2 distribution.</p> <p>12 And in 2016, I took a position at the home</p> <p>13 office with our pharmacy -- pharmacy order</p> <p>14 monitoring team. I did that for a year.</p> <p>15 And then in 2017, I moved back as the</p> <p>16 operations manager for the C2 distribution.</p> <p>17 Q. So in your answer -- we can appreciate you</p> <p>18 providing us that background -- you used -- I just</p> <p>19 want to make sure we're talking about the same</p> <p>20 thing. You used "the C2 side of the business" and</p> <p>21 "the C2 distribution." Are those the same things?</p> <p>22 A. Yes. Yes. I was the operations manager for</p> <p>23 the C2 distribution warehouse.</p> <p>24 Q. So you had that position from 2007 to 2016,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And you mentioned the pharmacy managers</p> <p>2 would come in and visit. Who were the pharmacy</p> <p>3 managers?</p> <p>4 A. Like their district managers, regional</p> <p>5 managers, those types of people, upper level</p> <p>6 management.</p> <p>7 Q. And do they have management over the</p> <p>8 individual stores' pharmacies?</p> <p>9 A. Yes. Like we were not -- we were not over</p> <p>10 the pharmacy. They had their own management</p> <p>11 structure.</p> <p>12 Q. Okay. And then in 2000, when you moved over</p> <p>13 to the home office, can you just describe briefly</p> <p>14 what you did between 2000 and 2006?</p> <p>15 A. Sure. I was a -- I was just a staff auditor</p> <p>16 to begin with. I was responsible for doing</p> <p>17 inventory audits where we would travel out to the</p> <p>18 stores. We would manage the inventory process that</p> <p>19 each store went through once a year. We were the --</p> <p>20 basically the liaison between the independent</p> <p>21 third-party company actually counting the</p> <p>22 merchandise in the store and the management staff of</p> <p>23 the store, and we made sure that the counts went</p> <p>24 right and correct.</p> <p>25 And then we also looked at financial things</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes, sir. And --</p> <p>2 Q. And then again from 2016 to --</p> <p>3 A. 2017 to present.</p> <p>4 Q. Okay. Can you -- I don't want to spend too</p> <p>5 much time on this, but can you just spend -- or</p> <p>6 describe for us briefly what you did as the</p> <p>7 assistant manager for Walmart stores?</p> <p>8 A. Sure. Just a management position covering</p> <p>9 all different departments. I was responsible for</p> <p>10 the opening and the closing of the store, you know,</p> <p>11 financial -- you know, financially, you know, what</p> <p>12 am I going to need for people, what's my payroll</p> <p>13 going to be next month, those types of financial</p> <p>14 things.</p> <p>15 Also, ordering, receiving, stocking, those</p> <p>16 types of things.</p> <p>17 And then just the management of people as</p> <p>18 well.</p> <p>19 Q. During that time period, did you have any</p> <p>20 involvement with the pharmacy side of the business?</p> <p>21 A. Not involvement. We had a pharmacy in the</p> <p>22 store. I was, you know, friends with the</p> <p>23 pharmacist. I knew the pharmacy managers who would</p> <p>24 come in and visit, those types of things; but as far</p> <p>25 as any operational things, we didn't -- or I didn't.</p>	<p style="text-align: right;">Page 17</p> <p>1 to essentially, at the end of the day, come out with</p> <p>2 this is how much product they counted, this is how</p> <p>3 much they say they have, and what's the difference</p> <p>4 between the two.</p> <p>5 Q. Did that -- did your role at that time</p> <p>6 regarding inventory and counting the merchandise</p> <p>7 involve any type of controlled substances?</p> <p>8 A. It -- it did include the pharmacy inventory,</p> <p>9 but we didn't -- there were -- the independent</p> <p>10 third-party company counted that, and we only looked</p> <p>11 at the financial records for the pharmacy. Those</p> <p>12 counts were included in the inventory, the C2</p> <p>13 counts; but as far as my dealings with the pharmacy,</p> <p>14 that's all they were.</p> <p>15 Q. And what do you mean by the "independent</p> <p>16 third party"? Who was that?</p> <p>17 A. There were two companies. We used RGIS and</p> <p>18 Washington.</p> <p>19 Q. And what did you use them for?</p> <p>20 A. We paid them to physically come in and count</p> <p>21 every item in the store.</p> <p>22 Q. And that would include controlled</p> <p>23 substances?</p> <p>24 A. Yes.</p> <p>25 Q. Do RGIS and Washington still do that today?</p>



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1 A. I don't know. I've not done it in a long  
2 time, so I don't know if they do or don't.  
3 Q. Do you know what -- do you know whether they  
4 were still doing it in 2010?  
5 A. I don't know. We still do an inventory  
6 process, but I don't know who does it or how it's  
7 done.  
8 Q. Were they responsible for doing the  
9 inventory process at the -- at the DC6045?  
10 A. No, sir.  
11 Q. Okay. Who was responsible for that process  
12 in 2007?  
13 A. So we didn't do the same process in the  
14 distribution center. Part of our process was to --  
15 we did inventory every day on the C2s.  
16 Q. All right. We'll get more into that --  
17 A. Okay.  
18 Q. -- detail later. Okay? And then in 2006,  
19 you became the operations manager for the returns  
20 process; is that correct, at 6045?  
21 A. Yes, sir.  
22 Q. And you held that position for approximately  
23 one year?  
24 A. Yes, sir.  
25 Q. And what -- what were your duties and

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1 responsibilities at that position?  
2 A. So DC6045 at that time had two different  
3 processes: There -- one part of it was the C2  
4 distribution side; then there was a completely  
5 different side in which they would receive outdated  
6 returns, drugs, from the stores. We would then  
7 process those by the manufacturer, and we would send  
8 those back to the manufacturer to get credit if  
9 credit was available.  
10 Q. Does DC6045 still have those two processes?  
11 A. The only process they have now is the C2  
12 distribution side; however, we do not distribute the  
13 actual bottles anymore. We still have the  
14 electronic 222 system that we -- that we monitor and  
15 do.  
16 But -- but that's the only -- after -- after  
17 2006, starting in 2007, they took that return  
18 process and turned it over to a third-party company.  
19 I don't remember the name, but they handled all of  
20 the returns for the stores.  
21 Q. Okay. And when -- when did Walmart cease  
22 distributing C2?  
23 A. April of this year, 2018.  
24 Q. And what was your exact title in 2007?  
25 A. Operations manager.

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1 Q. Is that the complete title?  
2 A. As far as I know it is. I mean, that's what  
3 I've been called.  
4 Q. Okay. Okay.  
5 A. Yeah.  
6 Q. I just want to be sure, because before you  
7 mentioned operation manager C2 -- for the C2  
8 business.  
9 A. Yes. I was -- so I was an operations  
10 manager for the returns side. Once that business  
11 went away, they transitioned me to the operations  
12 manager for the C2 side.  
13 Q. So could you describe then in 2007, when you  
14 took on that role, what were your duties and  
15 responsibilities?  
16 A. It was to -- to fulfill orders that came in  
17 to us every day, make sure those orders were filled  
18 accurately, and to make sure they were distributed  
19 or sent to the stores in a very secure manner, and  
20 to make sure -- you know, just to make sure the  
21 safety of the building, the product, and my people.  
22 There were some financial forecasting that I  
23 helped with. We also had the 222 form side, where  
24 ordering of the 222 forms from the DEA, tracking  
25 those forms, filling out those forms; and then, of

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1 course, the inventory process at the end of the day  
2 to make sure that, you know, we can account for all  
3 of the bottles.  
4 (Abernathy Exhibit 1 was marked for  
5 identification.)  
6 MR. MAZZA: Can you read that?  
7 THE WITNESS: Yes, sir.  
8 BY MR. BOWER:  
9 Q. Sir, you've been handed what's been marked  
10 as Exhibit 1 for today's deposition, which is --  
11 believe the earliest organizational chart, earliest  
12 in time, organizational chart we've received in this  
13 case.  
14 If you see the date on the bottom there, it  
15 has a revised date of 5/2007. Do you see that?  
16 A. No, sir.  
17 Q. Kind of in the middle of the page right  
18 under the chart.  
19 A. Oh, okay. Yes, sir.  
20 Q. And I apologize for the size. This is kind  
21 of the format we printed it out in, so I think it  
22 was this size as it was produced to us, too, so --  
23 A. Okay.  
24 Q. You see there you're reflected there, right?  
25 Your title is leads operations manager.

<p style="text-align: right;">Page 22</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And you reported to Mike Mullin at the time?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. And then kind of to the right on that</p> <p>6 chart is Jimmie Sherl. Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And then to the left is Sharon Morton?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. Did any of the folks under you --</p> <p>11 under you on that chart report to you, either during</p> <p>12 that time period or after?</p> <p>13 A. So all of the people under my name reported</p> <p>14 to me.</p> <p>15 Q. Okay. Did you report directly to Mike</p> <p>16 Mullin in 2007?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And how long did you report to Mike</p> <p>19 Mullin?</p> <p>20 A. I reported to him until he left. I don't</p> <p>21 remember what year that was. And then I reported to</p> <p>22 the next GM that came in.</p> <p>23 Q. And who was that?</p> <p>24 A. James Greer.</p> <p>25 Q. Do you see under Jimmie Sherl's name, it</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. Let's talk specifically about</p> <p>2 distribution of controlled substances.</p> <p>3 A. Okay.</p> <p>4 Q. Okay? What policies and procedures did you</p> <p>5 have specifically regarding the distribution of</p> <p>6 controlled substances in 2007?</p> <p>7 A. Well, I guess I don't understand because</p> <p>8 there were policies and procedures regulating, you</p> <p>9 know, how -- you know, how we picked those items and</p> <p>10 how we printed 222 forms, and I don't -- I mean, I</p> <p>11 don't have those in front of me. I mean, we had</p> <p>12 policies and procedures to follow, I know that, and</p> <p>13 those were set there because of the product we</p> <p>14 carried.</p> <p>15 Q. Sir, were you aware in 2007, that Walmart,</p> <p>16 as a distributor of controlled substances, had an</p> <p>17 obligation to monitor for suspicious orders?</p> <p>18 A. I wouldn't -- I don't know that I was aware</p> <p>19 of an obligation. We did -- we did monitor for --</p> <p>20 we did monitor orders, so --</p> <p>21 Q. Can you be more specific when you say "we</p> <p>22 did monitor orders"?</p> <p>23 A. I mean, we -- we would print 222 forms every</p> <p>24 day in this time frame. So we would pull those 222</p> <p>25 forms for however many stores we needed that day,</p>
<p style="text-align: right;">Page 23</p> <p>1 has -- it references "Operations Manager" and then</p> <p>2 "C2 Compliance and Security." Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Do you have any idea what that</p> <p>5 references, "C2 compliance"?</p> <p>6 A. I'm not sure. I'm not sure as far as the</p> <p>7 title and the reference. I mean, Jimmie was also</p> <p>8 our asset protection manager as well.</p> <p>9 Q. So were you aware in 2007 that as a</p> <p>10 distributor of controlled substances, Walmart had</p> <p>11 certain legal obligations?</p> <p>12 A. I mean, I under --</p> <p>13 MR. MAZZA: Object as to form.</p> <p>14 Sorry. Go ahead.</p> <p>15 A. I mean, I understand that we had policies</p> <p>16 and procedures and those types of things that we had</p> <p>17 to follow concerning the product that we had.</p> <p>18 Q. And you had those policies and procedures in</p> <p>19 place in 2007?</p> <p>20 A. We had policies and procedures in place,</p> <p>21 yes.</p> <p>22 Q. And what policies and procedures did you</p> <p>23 have in place in 2007?</p> <p>24 A. There were lots of those. I mean, I don't</p> <p>25 know specifically which one.</p>	<p style="text-align: right;">Page 25</p> <p>1 and we would print those 222 forms. And the ladies</p> <p>2 who were physically printing those forms, they</p> <p>3 looked at those orders; and if they saw something</p> <p>4 that maybe looked like it was kind of high, just</p> <p>5 based on their knowledge of what they were doing,</p> <p>6 they would -- they would let us know.</p> <p>7 And we also -- that's just the most</p> <p>8 prominent one I can think of, you know.</p> <p>9 Q. Do you recall the names of any of these</p> <p>10 ladies who would do this, who would look at those</p> <p>11 orders and determine whether they -- something was</p> <p>12 kind of high?</p> <p>13 A. It changed daily. And, you know, as people</p> <p>14 left and were hired, I mean, it changed throughout</p> <p>15 that time.</p> <p>16 Q. Okay. Well, what's -- what are some names</p> <p>17 as you sit here today that you can recall?</p> <p>18 A. Let's see. Rita Callahan, Gloria -- I can't</p> <p>19 remember her last name.</p> <p>20 Q. Sir, are any of those positions reflected on</p> <p>21 Exhibit 1 that you're referring to who would review</p> <p>22 those 222 reports?</p> <p>23 A. Yes. Under "Vault Input."</p> <p>24 Q. Okay. So we're looking at Exhibit 1 which</p> <p>25 is Walmart MDL000012771. And your testimony, sir,</p>

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1 is that the folks under this "Vault Input" were  
2 responsible for reviewing 222 reports and  
3 determining whether the orders were high; is that  
4 correct?

5 MR. MAZZA: Object as to form.

6 A. They looked at the orders, and they alerted  
7 us if something seemed a little high. I don't -- I  
8 mean, that -- I mean, that's what they did as far  
9 as -- that was just something that they did. It  
10 was --

11 Q. Okay. Well, do you know how they were  
12 supposed to determine whether something was high?  
13 Were there any written policies or procedures at  
14 that time?

15 A. As far as quantity or something, I don't  
16 think so. If they saw something that most all other  
17 stores was getting, you know, 10 bottles or whatever  
18 it may be and they saw something that was, you know,  
19 a whole lot higher than that, they may say, "Hey,  
20 this looks a little strange," or -- so --

21 Q. And who would they say that to?

22 A. It would -- mostly it was Sharon; or if I  
23 was around, she -- they would tell us --

24 Q. Okay.

25 A. -- and tell me, tell a member of management.

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1 Q. And this is in 2007, correct?

2 A. Uh-huh.

3 Q. And what would happen if they told you that  
4 an order looked high? What would you do?

5 A. Typically, I'd go call the store and ask  
6 them, "Hey, I saw this order, is this correct? Is  
7 this what you wanted," or --

8 Q. And then what would happen?

9 A. Just listen to what they said. A lot of  
10 times it was -- and I would say more times than not  
11 it was that they were ordering by the pill rather  
12 than the bottle a lot of times. They would get  
13 confused in that. So they may only want, you know,  
14 a bottle of 100, they may want 100 pills, so they  
15 would input 100, when really they just wanted one  
16 bottle. So, you know, we would see stuff like that.

17 Q. And if that happened, what would you do?

18 A. I would talk to the pharmacist and confirm  
19 the order. And if that's what the reasoning was,  
20 and he said, "No, I don't want that many, this is  
21 what I wanted," then we would correct that order.

22 Q. And what do you mean you "would correct the  
23 order"?

24 A. Well, we would --

25 Q. Would you cut the order?

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1 A. Yeah, we'd cut it to what he wanted.

2 MR. MAZZA: Objection to form.

3 Q. Okay. Would you report that order to the  
4 DEA?

5 A. I didn't report it to the DEA.

6 Q. Did anybody report it to the DEA?

7 A. I don't know.

8 Q. Well, who would know that?

9 A. I mean, I don't know.

10 Q. Sir, you were the operations manager for  
11 this DC, right?

12 A. Yes, sir.

13 Q. Okay. You don't know who would have  
14 reported it?

15 A. I don't know.

16 Q. Do you know whether it was reported?

17 A. I don't know if it was reported.

18 Q. Do you have any reason to believe that it  
19 was reported?

20 A. I don't know if it was reported. I didn't  
21 report it, so I don't know what happened to it after  
22 that.

23 Q. Do you have any reason to believe that it  
24 was reported?

25 A. I -- I can't answer that question because I

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1 don't know.

2 Q. Have you ever seen a report to the DEA made  
3 by Walmart of an order that was cut?

4 A. I've never -- no, because I've never  
5 reported anything to the DEA.

6 Q. Do you know whether anyone at Walmart has  
7 ever reported anything to the DEA?

8 A. I know that our home office, Health &  
9 Wellness Logistics staff, they do report stuff to  
10 the home office; but I don't know what they report,  
11 but I do know they are in communication with them.

12 Q. Sir, I just want to make sure your answer is  
13 clear for the record. You said, "I know that our  
14 home office, Health & Wellness Logistics staff, they  
15 do report stuff to the home office."

16 Do you mean they do report stuff to the DEA?

17 A. I'm sorry. Can you repeat that?

18 MR. BOWER: Can you just --

19 THE COURT REPORTER: Sure.

20 MR. BOWER: -- read back my question, I  
21 guess?

22 THE COURT REPORTER: I'll read it a little  
23 bit slower.

24 MR. BOWER: I warned you. I apologize.  
25 (Discussion off the record.)



<p style="text-align: right;">Page 30</p> <p>1 THE COURT REPORTER: Do you want his answer</p> <p>2 or his question -- your question?</p> <p>3 MR. BOWER: Just read his answer back and --</p> <p>4 THE COURT REPORTER: Okay.</p> <p>5 MR. BOWER: -- just make sure. See if he</p> <p>6 wants to clarify that for the record.</p> <p>7 THE COURT REPORTER: Okay.</p> <p>8 (The answer was read by the reporter.)</p> <p>9 A. I mean --</p> <p>10 BY MR. BOWER:</p> <p>11 Q. Is that an accurate statement, sir?</p> <p>12 A. That's accurate.</p> <p>13 Q. So the home office Health &amp; Wellness</p> <p>14 Logistics staffs, they report the stuff to the home</p> <p>15 office?</p> <p>16 A. To -- I think -- I'm confused because you</p> <p>17 said that they -- do they report stuff to the home</p> <p>18 office.</p> <p>19 Q. That's your testimony, sir. Is that</p> <p>20 accurate?</p> <p>21 A. Our Health &amp; Wellness Logistics home office</p> <p>22 team reports -- I know that they report stuff to the</p> <p>23 DEA, but I don't think that's what you said, though.</p> <p>24 You said does that team report to the home office.</p> <p>25 Q. I think the record is clear now, so I</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes, sir.</p> <p>2 Q. And one of the reasons you mentioned was</p> <p>3 that they may have ordered incorrectly, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Any other reasons that you recall where the</p> <p>6 stores would have provided a justification for an</p> <p>7 order that required you to call them?</p> <p>8 A. No, sir. That's the one I remember. I</p> <p>9 mean, I don't -- I mean, there's been thousands of</p> <p>10 orders. There may have been other reasons. That's</p> <p>11 just the one that happened most commonly. That's</p> <p>12 just the one I know of.</p> <p>13 Q. So as you sit here today, no other -- you</p> <p>14 can't recall any other reason why a store would have</p> <p>15 had an order that required you to call them?</p> <p>16 A. No, sir.</p> <p>17 Q. And when you say there -- there were</p> <p>18 thousands of orders; is that correct, sir?</p> <p>19 A. (Nodding head.)</p> <p>20 Q. How many orders were there per day?</p> <p>21 A. What time frame?</p> <p>22 Q. In 2007 time frame for C2 controlled</p> <p>23 substances.</p> <p>24 A. At the time -- we serviced all the Walmart</p> <p>25 facilities at the time. We serviced each facility</p>
<p style="text-align: right;">Page 31</p> <p>1 appreciate that.</p> <p>2 A. Okay.</p> <p>3 Q. How do you know that they report stuff to</p> <p>4 the DEA?</p> <p>5 A. I -- I mean I know that they are in</p> <p>6 communication with them. I thought that's what they</p> <p>7 were doing.</p> <p>8 Q. And how do you know that?</p> <p>9 A. Just if we have questions about stuff and we</p> <p>10 call and ask them, they would say, "Well, let me get</p> <p>11 with someone at the DEA and ask," so --</p> <p>12 Q. Well, my question is on reporting, sir.</p> <p>13 A. Okay.</p> <p>14 Q. Do you know whether anyone at Walmart</p> <p>15 reports orders that have been cut to the DEA?</p> <p>16 A. I don't know who reports to the DEA, if any.</p> <p>17 I personally don't know.</p> <p>18 Q. So the answer to my question is no, you</p> <p>19 don't know whether Walmart reports those cuts,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Sir, before we were talking about your</p> <p>23 discussions with the stores regarding their orders,</p> <p>24 if you had to call them up.</p> <p>25 Do you recall that discussion?</p>	<p style="text-align: right;">Page 33</p> <p>1 one time a week. We had a four-day operation, so it</p> <p>2 was roughly around probably 800 to 900 orders a day.</p> <p>3 Q. So there were thousands of orders a week,</p> <p>4 correct?</p> <p>5 A. Yeah.</p> <p>6 Q. And these folks on Exhibit 1, under the</p> <p>7 "Vault" and at "Vault Input" box, those folks were</p> <p>8 responsible for reviewing all those orders; is that</p> <p>9 correct?</p> <p>10 A. They -- yes. They pulled the forms and</p> <p>11 printed the forms for those orders.</p> <p>12 Q. Are you aware of any written policies or</p> <p>13 procedures that they were to use to monitor those</p> <p>14 orders in 2007?</p> <p>15 A. No.</p> <p>16 Q. Sir, were you aware that in 2007, the nation</p> <p>17 was undergoing an opioid epidemic?</p> <p>18 A. No, sir.</p> <p>19 Q. And when did you -- are you -- as you sit</p> <p>20 here today, are you aware that the nation is</p> <p>21 undergoing an opioid epidemic?</p> <p>22 A. I mean, yes, from what I've seen on TV.</p> <p>23 Q. Okay. When was the first time you became</p> <p>24 aware of it?</p> <p>25 A. I don't -- I don't know a date. I mean --</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. Approximately?</p> <p>2 A. Probably a year or so ago.</p> <p>3 Q. Of 2017?</p> <p>4 A. 2016, like during the campaigns for</p> <p>5 presidency, you know, it seems like it came up.</p> <p>6 Q. You never -- never talked about it at work</p> <p>7 before that, correct?</p> <p>8 A. I mean, no.</p> <p>9 Q. Never seen any correspondence from the DEA</p> <p>10 regarding the opioid epidemic before 2017, correct?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you -- as you sit here today, have you</p> <p>13 seen any -- from any government agency regarding the</p> <p>14 opioid epidemic?</p> <p>15 A. No, sir.</p> <p>16 Q. And all the opioids prior to April 2008 that</p> <p>17 were sold at Walmart pharmacies went through 6045,</p> <p>18 correct?</p> <p>19 A. Can you repeat that? I'm sorry.</p> <p>20 Q. Sure. Is that --</p> <p>21 MR. BOWER: Can you read back my question?</p> <p>22 THE COURT REPORTER: No. Sorry.</p> <p>23 MR. BOWER: That's fine.</p> <p>24 BY MR. BOWER:</p> <p>25 Q. Sir, prior to April 2018 --</p>	<p style="text-align: right;">Page 36</p> <p>1 AmerisourceBergen. I'm not sure -- I know that our</p> <p>2 Sam's Clubs get their stuff through</p> <p>3 AmerisourceBergen, so --</p> <p>4 Q. Sam's Clubs also get their Controlled 2</p> <p>5 substances from 6045, correct?</p> <p>6 A. They -- they switched solely to</p> <p>7 AmerisourceBergen, but I can't remember the time</p> <p>8 frame that they did that; but prior to that, they</p> <p>9 did.</p> <p>10 Q. Okay. Do you remember approximately when</p> <p>11 they made that switch?</p> <p>12 A. I don't. I don't.</p> <p>13 Q. Sir, have you -- what -- strike that.</p> <p>14 What's your current title, sir?</p> <p>15 A. Operations manager.</p> <p>16 Q. Have you ever seen a written description of</p> <p>17 the duties and responsibilities for that position?</p> <p>18 A. I mean, to my knowledge, no. I mean, I</p> <p>19 don't -- I mean, I don't recall seeing something.</p> <p>20 Q. When you took that position, you didn't</p> <p>21 receive any paperwork stating what the position</p> <p>22 required and what your -- what the expectations</p> <p>23 were?</p> <p>24 A. It -- I believe on the job description, it</p> <p>25 was on there.</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Okay.</p> <p>2 Q. -- okay, were all the opioids that Walmart</p> <p>3 dispensed from its pharmacies distributed by 6045?</p> <p>4 A. No.</p> <p>5 Q. Okay. Where else would Walmart pharmacies</p> <p>6 get opioid products?</p> <p>7 A. The pharmacies could get product from</p> <p>8 McKesson and AmerisourceBergen.</p> <p>9 Q. Do you know what time period the pharmacies</p> <p>10 could get products from McKesson?</p> <p>11 A. Since I've been there, they've been able to</p> <p>12 do that.</p> <p>13 Q. Okay. And is that continuously since --</p> <p>14 from 2006 through today?</p> <p>15 A. Through 2000 --</p> <p>16 MR. MAZZA: Object to form.</p> <p>17 Go ahead.</p> <p>18 A. Since 2007, when I was a part of the C2</p> <p>19 distribution side.</p> <p>20 Q. So you don't know what was happening in</p> <p>21 2006, correct?</p> <p>22 A. No. I was in a different operation.</p> <p>23 Q. And the same for AmerisourceBergen, 2007</p> <p>24 through today?</p> <p>25 A. I can't -- I don't know exactly about</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Did you receive a written job description?</p> <p>2 A. When I took the position, yes, I think it</p> <p>3 was part of that.</p> <p>4 (Abernathy Exhibit 2 was marked for</p> <p>5 identification.)</p> <p>6 MR. MAZZA: Thanks.</p> <p>7 BY MR. BOWER:</p> <p>8 Q. Sir, you've been handed what's been marked</p> <p>9 as Exhibit 2 for today's deposition. This is just a</p> <p>10 two-page exhibit, Bates numbers ending in 12752 and</p> <p>11 12737. It appears to be two organizational charts:</p> <p>12 One for the pharmacy distribution group or division,</p> <p>13 and one for the Health &amp; Wellness Distribution group</p> <p>14 or division.</p> <p>15 Do you see that, sir?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Have you seen these documents before today?</p> <p>18 A. No, sir.</p> <p>19 Q. Was there a point in time when you were made</p> <p>20 aware that you were part of the pharmacy</p> <p>21 distribution operations at Walmart?</p> <p>22 A. I mean, when I applied for the job, I knew</p> <p>23 that's what I was applying for.</p> <p>24 Q. Okay. So if you compare this Exhibit 2 to</p> <p>25 Exhibit 1, does the -- did that -- did the</p>

<p style="text-align: right;">Page 38</p> <p>1 organizational structure of 6045 fit within this  2 larger pharmacy distribution operations, or were  3 they separate groups, in your mind?  4 I'm just trying to get a sense of how 6045  5 fits within this first page of Exhibit 2 here, if at  6 all?  7 MR. MAZZA: Object to form.  8 A. Well, this was from 2007, you said, and this  9 is from 20- -- I mean from 2010.  10 Q. Correct. Well, let me ask it a different  11 way if you're having -- if that doesn't make sense  12 in your mind.  13 Were there any changes in the structure of  14 the distribution side of the business between 2007  15 and 2010?  16 A. 2010? So, I mean, I know that we reported  17 to Tim Harris. So my boss, Mike, he would report to  18 Tim, so --  19 Q. Was that also the case in 2007?  20 A. I'm trying to remember back. I'm not sure  21 if it's the same in 2007 as it was in 2010.  22 Q. And what about if you turn to Page 2 of that  23 exhibit, sir, now we're into 2011, do you see the  24 date under "Health &amp; Wellness Distribution" there,  25 "Fourth Quarter 2011"?</p>	<p style="text-align: right;">Page 40</p> <p>1 asked questions about that.  2 I don't know that there was a specific  3 person. I mean, we just -- I mean, everybody just  4 wanted to make sure that the order was correct.  5 Q. Well, in 2010, was anyone on this page  6 responsible for reviewing those orders? Did anyone  7 have that specific responsibility?  8 MR. MAZZA: Object to form.  9 A. I mean, no, sir, not specifically do this,  10 no, sir. We just -- that's just what we did.  11 Q. And can you describe what you mean when you  12 say "that's just what we did"? What does that mean?  13 A. Well, we just -- when we were printing the  14 forms and looking at the orders, we just, like I  15 said, if a quantity stood out that seemed to be not  16 normal or what they perceived as normal, they would  17 report that to one of the managers, and we would  18 call the store and ask about, "Is the order correct?"  19 Q. And we're talking about 700 to 800 orders  20 per day, correct?  21 A. Yes, sir.  22 Q. Would you yourself review 700 to 800 orders  23 each day?  24 A. I personally would not.  25 Q. Okay. How many orders would you review?</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes, sir.  2 Q. Okay. Do you recall a structural change  3 during this time period? And by that, I mean  4 between 2010 and 2011 where the pharmacy  5 distribution was in some way changed or reorganized  6 to Health &amp; Wellness Distribution?  7 A. I mean, I don't -- I don't remember any  8 changes, I mean, structurally.  9 Q. There were no changes during this time  10 period that impacted your duties and  11 responsibilities; is that correct?  12 A. I mean, I don't remember anything.  13 Q. Let's look -- if you could for me, turn back  14 to the first page of Exhibit 2. During this time  15 period in 2010, can you identify for us the folks on  16 this page that may have been responsible for  17 suspicious order monitoring for controlled  18 substances?  19 A. 2010. I'm trying to remember back to 2010.  20 Q. Well, can you recall generally what the  21 procedure was for suspicious order monitoring in  22 2010 for controlled substances?  23 A. We -- it was -- it was the same as I had  24 mentioned before. You know, if we saw an order or  25 something that looked not like the rest of them, we</p>	<p style="text-align: right;">Page 41</p> <p>1 A. I didn't review any orders. I just, if they  2 brought something to me, I went and called the  3 store.  4 Q. Okay. And when you say when "they brought  5 something to me," are those people who could have  6 brought them to you reflected on Exhibit 2?  7 A. "Hourly associates" under the 6045. I mean,  8 that's who those people were.  9 Q. Okay. So during this time period, Walmart  10 had hourly associates reviewing 700 to 800 orders  11 per day for purposes of carrying out its suspicious  12 order monitoring; is that correct?  13 A. Those associates reviewed those orders. I  14 mean, if there was something wrong with them, they  15 let us know and we called the store to find out if  16 that was correct.  17 Q. And how would they let you know? Would they  18 give you a call? Would they send you an e-mail?  19 What would they physically do?  20 A. Typically, it was a pretty small building.  21 They would just come over and just say, "Hey, this  22 doesn't look right," or, "This looks high," or,  23 "Just something about this, can you check on it?"  24 "Yeah. Sure. I'll call and find out."  25 Q. Other than whether something was high or</p>

<p style="text-align: right;">Page 42</p> <p>1 not, would they look for anything else, for example,  2 unusual patterns?  3 A. So they could -- there were times when they  4 may say, yes, "It looks like this -- each store is  5 getting, you know, more bottles than we normally see  6 of this item," you know. It seems like that's  7 happening a lot today.  8 Or the associates who were picking those  9 products and putting them in the box, they may say,  10 "I'm picking -- normally I only pick one or two  11 bottles of this for a store, but today it seems like  12 I'm picking up four and five. That just -- that  13 just seems odd."  14 So, you know, we would, you know, contact  15 maybe our replenishment team at the home office and  16 say, "Hey, is something going on? It just seems  17 like a lot of stores are getting this."  18 And they would research and find out, so --  19 Q. So now we're talking about a different  20 process, correct? The picking folks weren't  21 responsible for monitoring the orders; is that  22 correct?  23 A. So the picking folks were responsible for  24 filling the order that came to them, yes.  25 Q. And Walmart, in 2010, had a policy in place</p>	<p style="text-align: right;">Page 44</p> <p>1 but, I mean, we would generally try to wait and see  2 if there was something we needed to do with the  3 order. If we did not hear back or did not -- we  4 would send the order on.  5 Q. Under this scenario, would you keep a file  6 for these orders that were investigated?  7 A. No, sir.  8 Q. And why not? No one told you to do that?  9 A. No, sir.  10 MR. MAZZA: Object to form.  11 Q. Did anyone tell you to keep a file when you  12 investigated an order in 2010?  13 A. No.  14 Q. If you go on back to Exhibit 2, sir, for a  15 minute, you compare the first and second page. The  16 first page, your position is reflected as being  17 under Mr. Sherl and Ms. Morton. Do you see that?  18 And the second page, it's above them, too. Does  19 that reflect a change in the reporting structure?  20 A. No, sir.  21 Q. Okay. Does that reflect any change that was  22 made between 2010 and 2011?  23 A. No, sir.  24 MR. BOWER: Why don't we take a quick break?  25 We've been going about an hour.</p>
<p style="text-align: right;">Page 43</p> <p>1 where the folks who were responsible for picking the  2 orders would also report to you if they saw anything  3 suspicious?  4 A. I can't say that there was a policy stating  5 that. They -- they would just do that.  6 Q. And what would you have done if someone  7 provided you that information?  8 A. Then I would start researching or trying to  9 find the people who could help me understand it or  10 let people know, "Hey, there may be a problem with  11 the order or with the ordering system," or whatever  12 it needed to be.  13 Q. So while you were doing that, what was  14 happening with the order that they were filling?  15 A. Well, we would continue to process the  16 order, and then, you know, wait to hear back what  17 the answer was; or, you know, it just depended on  18 whatever happened after that.  19 I mean, like, if I, you know, would call and  20 report that and just say, you know, to the  21 replenishment team, "Hey, there may be something  22 wrong with the ordering system," or whatever, they  23 would research it and then we would go on as normal.  24 If they -- I mean, I don't -- I don't  25 remember specifics, times as to what would happen;</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. MAZZA: Okay.  2 MR. BOWER: Just like five minutes.  3 MR. MAZZA: Sure.  4 THE VIDEOGRAPHER: Going off record. The  5 time is 10:29.  6 (Recess from 10:29 a.m. until 10:42 a.m.)  7 THE VIDEOGRAPHER: We're going back on the  8 record, beginning of Media File Number 2. The  9 time is 10:42.  10 BY MR. BOWER:  11 Q. I have just a couple of hopefully short  12 follow-up questions from the discussion before the  13 break and then we'll move on to some more recent  14 time period where we have some more documents that  15 we can talk more specific about. Okay?  16 You testified that during this time period,  17 when a picker or one of the hourly associates would  18 notify you of an order that needed to be checked or  19 reviewed, you would call the store, correct?  20 A. Correct.  21 Q. Is there anything else that you would do?  22 A. Well, you know, if one of the pickers showed  23 me that, "Hey, this seems to be picking heavy  24 today," I wouldn't necessarily call the store. I  25 would call maybe someone on our replenishment team,</p>

<p style="text-align: right;">Page 46</p> <p>1 because they would deal more with that than the 2 store would since it was occurring over multiple 3 stores. 4 But then after that, I would just, you know, 5 go ahead and fill the order, call the store. If I 6 needed to cut the order to make it correct, that's 7 what I would do. 8 Q. And you didn't keep a log of these 9 investigations, correct? 10 A. No, sir. 11 Q. And you didn't keep a log of the orders that 12 were cut or changed, correct? 13 A. No, sir. 14 Q. And you didn't keep a log of the orders that 15 may have been canceled, correct? 16 A. No, sir. 17 Q. And if an order was, for example, cut or 18 changed, would you tell anybody? 19 A. I mean, I would let my general manager know 20 that this happened and this is what we did. 21 Q. And how would you let them know? Would it 22 be verbal communication or written? 23 A. Verbal. 24 Q. Okay. Is there a reason that you wouldn't 25 provide them written communication?</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yes, sir. 2 Q. Okay. Did those -- did the products it 3 could get from those distributors include opioid 4 products, such as OxyContin? 5 A. Yes, sir. 6 Q. Okay. Sir, do you have any idea 7 approximately in what time period the pharmacy order 8 monitoring team was formed? 9 A. 2015. 10 (Abernathy Exhibit 3 was marked for 11 identification.) 12 BY MR. BOWER: 13 Q. Sir, you've been handed what's been marked 14 as Exhibit 3 to today's deposition. Just take a 15 moment, please review that e-mail string. I can 16 tell you I will have -- I will have the question 17 starting from the first e-mail in the string through 18 the last. 19 Have you had a chance to review it, sir? 20 A. Yes, sir. 21 Q. My first question is: Do you have any idea 22 what the reference to "C2 limits" in the subject 23 line means -- would have meant during the 2012 time 24 period? 25 A. I'm sorry. I didn't hear, say that again.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. I mean, no, sir. 2 Q. And your general manager during this time 3 period was who? 4 A. Mike Mullin. 5 Q. Mullin. 6 Do you have any understanding what 7 Mr. Mullin may have done with that information? 8 A. No, sir. 9 Q. Did anyone ever tell you to provide him a 10 written communication that an order had been cut or 11 changed? 12 A. I don't recall anyone telling me to do that. 13 Q. These orders, this policy we've been talking 14 about, the procedure, that include -- would include 15 opioids, correct, sir? 16 MR. MAZZA: Object to form. 17 A. They refer to all C2 drugs. 18 Q. So it would include OxyContin, for example, 19 correct? 20 A. Yes. 21 Q. And you also testified, sir, that during 22 certainly part of the time frame for AB -- ABDC and 23 most of the time frame for McKesson, pharmacies 24 could also get controlled substances from those 25 distributors, correct?</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. I'll rephrase the question. Do you see in 2 the e-mail to you, the one at the top from Ramona to 3 the DC team, including yourself, Jimmie Sherl, and 4 Mike Mullin, do you see that? 5 A. Yes, sir. 6 Q. And the subject has a forward and then "CII 7 Limits." 8 Do you see that? 9 A. Yes. 10 Q. Do you know what "CII Limits" refers to? 11 A. From the document, it looks like when we 12 would cut oxycodone 30 to 20 bottles. 13 Q. Prior to receiving this e-mail, was that the 14 policy? 15 A. No, sir. 16 Q. Okay. Was the policy, as you've already 17 explained today, the existing policy up until 18 approximately July of 2012? 19 A. We were not cutting at 20 prior to this. I 20 mean, there was -- that didn't stop us from looking 21 at orders that -- again, that may be odd, but we 22 didn't have direction at that point to do that. 23 Q. Going down a bit, if you look down in the 24 e-mail, the e-mail from Ramona to Brandon. Who was 25 Brandon Worth, do you know?</p>



<p style="text-align: right;">Page 50</p> <p>1 A. I know he's someone on the operations side.  2 I don't -- I don't know him.  3 Q. Do you know who the reference -- his e-mail  4 to Ramona references "Bart's data." Do you see  5 that?  6 A. Yes.  7 Q. Do you know what that reference is?  8 A. I don't know.  9 Q. Do you know who Bart is?  10 A. No, sir. I know -- I've heard his name  11 mentioned as far as replenishment stuff, but I don't  12 know him or what he does.  13 Q. Well, you see, though, that based on that  14 data, the suggestion was to put a max limit of 20  15 bottles for oxy-30s. Do you see that?  16 A. Yes.  17 Q. And then it says: "After two weeks, we will  18 then visit on what our next step of drugs to focus  19 on will be."  20 Do you see that?  21 A. Yes.  22 Q. And then it says: "Time to lock down the  23 process at the DC."  24 Do you see that?  25 A. Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 manager came in first that day. That was Jimmie  2 Sherl's typical job. He came in first. On occasion  3 I would do it if I was covering for a vacation or  4 something like that.  5 Q. So the typical process was Jimmie Sherl  6 would come in every day, review all the orders for  7 C2 controlled substances, correct?  8 A. Yes.  9 Q. Okay. And then for any order of oxy-30s  10 that was over 20, you would automatically cut them,  11 correct?  12 A. Yes.  13 Q. And for all of those orders that were cut,  14 he would send an e-mail to the compliance team, the  15 global investigations team, the asset protection  16 team, and the general manager, correct?  17 A. Yes.  18 Q. Okay. Is that a written policy?  19 A. That was following what -- the e-mail we had  20 from Ramona.  21 Q. Okay. Other than this e-mail, was there a  22 written policy?  23 A. I don't know of any.  24 Q. Have you ever seen one?  25 A. I haven't seen one.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And when you received this e-mail, do you  2 have any understanding what that meant, what "time  3 to lock down the process at the DC" meant?  4 MR. MAZZA: Object to form.  5 A. I don't -- I don't know what was meant by  6 that.  7 Q. Well, when you received this e-mail, what  8 did you think?  9 A. When I received this e-mail, we were  10 supposed to -- any order of oxy-30 over 20 to cut  11 that to 20.  12 Q. If you cut an order to 20, would you do  13 anything else? Would you report that order, for  14 example?  15 A. We -- we did report that to the -- the  16 compliance team, the global investigation team, our  17 asset protection team, and my general manager.  18 Q. And how was that reporting done?  19 A. We sent it in an e-mail every day.  20 Q. So a daily e-mail was sent to those four  21 buckets of people that you just mentioned; is that  22 correct?  23 A. Yes.  24 Q. Okay. And who would send that e-mail?  25 A. It was the responsibility of whichever</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. The second sentence kind of that e-mail to  2 the DC team, it says: "I will be sending Reddwerks  3 an e-mail to make the appropriate change to the  4 order level alert parameter screen."  5 Do you see that?  6 A. Yes.  7 Q. What does that refer to?  8 A. I don't -- I don't know right off the top of  9 my head.  10 Q. Sir, there's -- there's -- right, there's  11 three people responsible for this, right? Yourself,  12 Mr. Sherl, and Mr. Mullin, right?  13 A. Right.  14 MR. MAZZA: Object to form.  15 Q. Right. And the policy -- let me strike  16 that.  17 During 2000 -- at this time period in 2012,  18 was there an order level alert in place for DC6045?  19 A. Well, we would pull the orders, and we would  20 search for oxy-30s that were over 20 and pull those  21 out, and then we would cut those to 20.  22 Q. But you wouldn't do that until you -- until  23 after receiving this e-mail, correct?  24 A. Correct.  25 Q. At the time of receiving this e-mail, was</p>

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1 there an order level alert parameter screen already  
 2 in place? Do you see the e-mail reference is "the  
 3 order alert parameter screen."  
 4 Do you see that?  
 5 A. I do see that.  
 6 MR. MAZZA: Object -- sorry.  
 7 Objection as to form.  
 8 Q. What does that refer to?  
 9 A. I don't remember seeing an alert parameter  
 10 screen. I don't know -- I don't remember that. So  
 11 I'm not -- I'm just saying I know that we would pull  
 12 the orders. We -- we had a process that we followed  
 13 to pull those orders. I don't know -- I can't  
 14 remember a certain screen called "parameter screen."  
 15 Q. Well, prior to receiving this e-mail, would  
 16 you yourself pull the orders?  
 17 A. No.  
 18 Q. That was hourly associates, correct?  
 19 A. Yes.  
 20 Q. After receiving this e-mail, was that  
 21 responsibility shifted from the hourly associates to  
 22 Mr. Sherl and potentially yourself?  
 23 A. Yes.  
 24 Q. Was there a written policy or procedure put  
 25 in place to make that change?

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1 A. I don't -- I didn't see a written policy to  
 2 do that.  
 3 Q. Did anyone ever explain to you why that  
 4 change was being made?  
 5 A. No, sir.  
 6 Q. Did you ever have any questions about why  
 7 that change was being made?  
 8 A. No, sir.  
 9 Q. You just did what you were told?  
 10 A. I followed the policy and the procedures  
 11 that were given to me.  
 12 Q. Right. And all those policies and  
 13 procedures, sir, are reflected in this e-mail,  
 14 correct, with respect to this monitoring for  
 15 oxycodone, correct?  
 16 MR. MAZZA: Object; form.  
 17 A. I -- I don't -- I can't speak to policy or  
 18 procedure. I was told, "This is what you need to  
 19 do," so that's what I did.  
 20 Q. And this is specific to the oxycodone  
 21 30 mgs. Do you see that?  
 22 A. Yes, sir.  
 23 Q. Was there anything -- anything being done  
 24 for other strengths of oxycodone?  
 25 A. We were also looking at orders that were

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1 over 50 for all other C2s that were not  
 2 oxycodone 30.  
 3 Q. And when did that start?  
 4 A. It's around this same time period, 2012.  
 5 Q. Sir, you said you were also looking at  
 6 orders that were over 50. What would you do if an  
 7 order was over 50?  
 8 A. We would report those same orders to the  
 9 people I listed, the compliance team, the global  
 10 investigations team, and the AP team.  
 11 Q. Can we just talk for a minute, then, about  
 12 what the ordering and filling process was? Can you  
 13 just describe how that worked generally?  
 14 A. So the system would go out and grab the  
 15 orders for a particular store for whatever day they  
 16 were scheduled to pick on. Those orders would then  
 17 come into the building.  
 18 Let me ask time frame because, you know,  
 19 it's changed. So are you talking about 2012?  
 20 Q. Yes, I appreciate that. Thank you. Yes,  
 21 2012?  
 22 A. Okay. So in 2012, they would come in, and  
 23 those would be dropped into a pick-to-light system  
 24 we had called Reddwerks, and those orders would come  
 25 in. And then we had inside the vault where our C2s

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1 were, we had pick bays; and in those pick bays, it  
 2 would have lights in front of each slot.  
 3 And as we scanned a bar code that would  
 4 print out saying this is the order for Store 1 and  
 5 it would be a bar code, we would scan that bar code.  
 6 And in the first bay, it would light up and it would  
 7 tell the associate, "Pick two of this one, pick one  
 8 of this one," whatever in their bay they were  
 9 supposed to pick.  
 10 Once they picked it, they would hit the  
 11 light, the light would go off. They would pass it  
 12 to the next person. The next person would scan that  
 13 bar code, and it would tell them what to pick in  
 14 their bay. And this process happened for about five  
 15 bays, and they would pass it on.  
 16 As it was -- as it was done, completed being  
 17 picked, we -- it would go to what we call a QC  
 18 station or a quality control station. It was a --  
 19 it was a system still built by Reddwerks in which it  
 20 would do a blind QC, meaning the associate scanning  
 21 the drugs did not know what was supposed to be in  
 22 that order.  
 23 So they would scan the bar code to tell the  
 24 computer what store or order they were working on.  
 25 They would scan each bottle in that order. Once

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1 they were done, they would hit a reconcile button.  
 2 And then the system would say, "Yes, that  
 3 order is correct," or, "No, the order is not  
 4 correct. You have too many of this one, you have  
 5 one of this one you shouldn't have, or you don't  
 6 have this one."

7 So we would then stop and we would go  
 8 correct that order, get the bottle we need, put the  
 9 bottle back we don't need, whatever the situation  
 10 was.

11 Then that person would then rescan that  
 12 order again. Until they got a complete scan that  
 13 was correct, the system would not let it move on to  
 14 the next section.

15 Once the --

16 Q. I don't want to cut you off.

17 A. Once the system was completed and it was  
 18 correct, then it was sent around to a shipping area  
 19 where -- I'm sorry. Let me back up.

20 It was put into a sealed bag at the QC  
 21 station, like a Ziploc bag but it had a control seal  
 22 on it. That was sent around to our shipping area  
 23 where that bag was put into a box and sealed with  
 24 the shipping information put on it.

25 At that point, we would scan that bar code

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1 again to bill the store for what was in that box.  
 2 And then it would move out to the Fed Ex cage that  
 3 we had dedicated just for Fed Ex for shipment.

4 Q. Okay. I appreciate that explanation. Thank  
 5 you.

6 So during this time period in 2012, let's  
 7 say an order for oxy 5 milligram comes in on a  
 8 Monday for 51 bottles. Okay?

9 A. For which drug?

10 Q. Oxy 5 milligrams.

11 A. Okay.

12 Q. Okay? You're supposed to have a process in  
 13 place, right, where you look at orders over 50,  
 14 correct?

15 A. Yes.

16 Q. Okay. And what was the expectation as to --  
 17 with respect to when that order would be filled and  
 18 shipped, if the order came in on a Monday?

19 A. So Monday morning, typically when Jimmie  
 20 came in, since he was the first one in, before we  
 21 started the pick process, he would pull all of those  
 22 orders and export it to a spreadsheet and then we  
 23 would, you know, sort those to show me orders or in  
 24 the order column, show me everything over 50, show  
 25 me all the oxy's over 30, and we would filter it out

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1 that way so that we could see here is all of my  
 2 oxy-30s that were over 20 and here's all the other  
 3 drugs that were over 50.

4 Q. And if another dosage of oxycodone was over  
 5 50, what would you do?

6 MR. MAZZA: Object; form.

7 Q. I'll strike that.

8 If another order came in for another dosage  
 9 of oxycodone that was not oxy-30s, it was oxy-10s or  
 10 oxy-5s, that was over 50 bottles -- we're talking  
 11 bottles, correct?

12 A. Yes.

13 Q. Okay. What would you do?

14 A. So I guess I don't understand when you say  
 15 "another order." Like the next store in line?

16 Q. Well, let's -- let's take a step back. All  
 17 right.

18 A. Okay.

19 Q. Go back to my first example, right. A store  
 20 orders 51 bottles of oxy-5 milligrams on Monday.

21 A. Okay.

22 Q. The order comes in on Monday. You get your  
 23 printout of that order. Then what happens?

24 A. So then we would send that over to the team,  
 25 the teams I spelled out, and we would say, "This

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1 store for this product ordered 51 bottles."

2 Q. And from your perspective, what would happen  
 3 next?

4 A. Then we would wait. If they would send us  
 5 back whatever communication or if we needed to do  
 6 something with the order, we would just wait for  
 7 that.

8 Q. And how would they inform you of what to do  
 9 with the order?

10 A. E-mail.

11 Q. And that's what happened on a daily basis,  
 12 correct?

13 A. Yes, sir.

14 Q. During this time period, when would you have  
 15 expected to hear back from them regarding what to do  
 16 with the order?

17 A. So we shipped every day at 3:00 p.m. I mean  
 18 we had had discussion, that's the -- that's the time  
 19 we ship. They had known that. So if we didn't hear  
 20 anything back by 3:00 p.m., then we went ahead and  
 21 shipped the item.

22 Q. Okay. And let me -- and let me direct your  
 23 attention then to that second -- the first line, the  
 24 second paragraph of that e-mail to the DC team.

25 MR. MAZZA: We're on Exhibit 3, right?

<p style="text-align: right;">Page 62</p> <p>1 Q. Yeah, sorry. Still on Exhibit 3 there. I</p> <p>2 just -- I just want to know what the reference to</p> <p>3 the "regional" is, end of the first line: "Direct</p> <p>4 them to their regional."</p> <p>5 Do you know what that refers to?</p> <p>6 MR. MAZZA: That.</p> <p>7 A. Yes, sir. I -- I mean, since -- I mean, I</p> <p>8 didn't write it, but I'm going to -- I'm going to</p> <p>9 say that she meant her regional manager or their</p> <p>10 regional manager.</p> <p>11 Q. Are these the same managers we -- managers</p> <p>12 we asked about earlier, the pharmacy managers? Or</p> <p>13 is this a different regional manager?</p> <p>14 A. This would have been the store's regional</p> <p>15 manager.</p> <p>16 Q. So not a pharmacy-specific manager?</p> <p>17 A. Not a Health &amp; Wellness Logistics manager.</p> <p>18 It would have been a pharmacy regional manager.</p> <p>19 Q. And on the next line there, it references a</p> <p>20 "web form." What is that?</p> <p>21 A. So at this time, in 2012, we shipped to each</p> <p>22 store one day a week. So if a store needed an order</p> <p>23 outside of their normal order schedule, they could</p> <p>24 fill out a form. It's like a generic e-mail web</p> <p>25 form that they would send to our associates in the</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. Is this an example of the daily</p> <p>3 process at 6045 with respect to C2 orders?</p> <p>4 A. Yes, sir.</p> <p>5 Q. This would happen how many times a week,</p> <p>6 approximately, during this time frame?</p> <p>7 A. Every day.</p> <p>8 Q. So five times a week --</p> <p>9 A. Yes.</p> <p>10 Q. -- or seven?</p> <p>11 A. We -- we picked four days a week. However,</p> <p>12 on Fridays, should a store call in with a web form</p> <p>13 order, we would pick maybe five or six stores on a</p> <p>14 Friday if that's -- was the case. So we didn't pick</p> <p>15 always on a Friday, but sometimes.</p> <p>16 Q. All right. So other than web form orders,</p> <p>17 this was the process?</p> <p>18 A. Yes.</p> <p>19 Q. And, Mr. Sherl -- if you go to the first</p> <p>20 e-mail in the chain, Mr. Sherl's e-mail on Monday,</p> <p>21 July 23rd at 9:33 a.m., 2012, he sends an e-mail to</p> <p>22 Mr. Mullin and Ramona Sullins cc'ing yourself and</p> <p>23 Teresa Miller. Do you see that?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. And at this point in the day, at</p>
<p style="text-align: right;">Page 63</p> <p>1 office to let those associates know that they needed</p> <p>2 additional drugs or product of a -- whatever they</p> <p>3 needed, and then they would go into the system and</p> <p>4 physically key the order in.</p> <p>5 So the web form was to tell us that, you</p> <p>6 know, you need to take this store who is not going</p> <p>7 to pick on this day and put them in that pick batch</p> <p>8 so that the system will go out and grab those</p> <p>9 orders.</p> <p>10 Now, the web form was for three different</p> <p>11 items and only two bottles of each item. So it was</p> <p>12 designed so that -- to get them to their next order</p> <p>13 day was what it was set up to do.</p> <p>14 (Abernathy Exhibit 4 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. BOWER:</p> <p>17 Q. Sir, you've been handed what's been marked</p> <p>18 Exhibit 4, ending in Bates Number 9321. It's an</p> <p>19 e-mail chain from Ms. Sullins to Mr. Sherl,</p> <p>20 yourself, and a few others. Take a moment to review</p> <p>21 that and let me know when you've had a chance to</p> <p>22 take a look.</p> <p>23 A. Okay.</p> <p>24 Q. All right, sir. You've had a chance to</p> <p>25 review the document?</p>	<p style="text-align: right;">Page 65</p> <p>1 9:38 a.m., had he already reviewed that day's</p> <p>2 orders?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And he had decided to cut some orders,</p> <p>5 correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And he had decided to not cut other orders,</p> <p>8 correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. Had he -- had -- strike that.</p> <p>11 For the orders that he decided to cut, what</p> <p>12 would be the basis for that decision?</p> <p>13 MR. MAZZA: Object; foundation.</p> <p>14 A. I -- I don't know. I mean --</p> <p>15 Q. Well, sir, you also had -- this was also</p> <p>16 your responsibility at the time period, correct?</p> <p>17 A. It was my responsibility if I came in first</p> <p>18 that day.</p> <p>19 Q. Right. So what was the criteria for</p> <p>20 cutting?</p> <p>21 A. If anything over 20 bottles of oxycodone-30,</p> <p>22 cut it to 20.</p> <p>23 Q. What about for, for example, an order here</p> <p>24 of -- the one towards the bottom that's in bold, 48</p> <p>25 bottles of oxycodone/APAP 5/324. Is there any</p>

<p style="text-align: right;">Page 66</p> <p>1 policy or procedure as to what to do with that 2 order? 3 A. I'm sorry, which one? The -- 4 Q. The -- sorry. Going up from the bottom, the 5 third bullet point up from the bottom, and it has -- 6 I'll just read for it the record. 7 2929 is a reference to the store number, 8 correct, sir? 9 A. Yes, sir. 10 Q. It says: "2929 has 48 bottles of oxyco/APAP 11 5/325." 12 Do you see that? 13 A. Yes, sir. 14 Q. Was there any policy in place as to how to 15 deal with that order? 16 A. No, sir. 17 Q. So do you see that that store, Store 2929 18 had a high volume at 659,000 for the months of June. 19 Do you see that? 20 A. I see that it's written on here. 21 Q. Well, do you have any reason to doubt that 22 that's accurate, sir? 23 A. I mean, I -- like I said, I don't know -- I 24 couldn't testify or say that it was right or wrong. 25 Q. Well, do you have any reason to doubt the</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. And there's Store 225, going up a couple -- 2 2555, a couple of bullet points up, is also a high 3 volume store, correct? 495,000 for the month of 4 June, right? 5 MR. MAZZA: I'm sorry. Oh, okay, never 6 mind. Sorry. 7 A. Yeah. I don't know if he's talking about 8 bottles or prescriptions or what. 9 BY MR. BOWER: 10 Q. So it's your testimony, sir, he could have 11 been referring to 495,000 bottles? 12 A. I don't have the information here to know if 13 that's what he was referring to. 14 Q. What information would you need to know to 15 answer that question? Sorry. Strike that. 16 What information would you need to have to 17 answer that question? 18 A. I'd probably need to ask Jimmie, "What were 19 you talking about for 659,000." 20 Q. You would want to ask him, correct? 21 A. Yeah. 22 Q. Do you have any idea what data he was 23 looking at during this time period? 24 A. I don't. 25 Q. Going back to that -- my example of</p>
<p style="text-align: right;">Page 67</p> <p>1 accuracy of that information, sir? 2 A. I don't -- I mean -- I can't answer that. I 3 don't know. I couldn't -- like I said, I didn't 4 write this, so I don't know. 5 Q. And I'm not asking you to testify that it's 6 accurate. I'm asking you whether you have any 7 reason to doubt it? Did you and Mr. Sherl at this 8 time period have access to the monthly purchases 9 from the stores? 10 MR. MAZZA: Object; form. 11 A. I don't remember looking at that. 12 Q. Well, it appears that Mr. Sherl was looking 13 at that, correct? 14 A. Yes, sir. 15 Q. Not something you would have considered at 16 that time? 17 A. I don't remember doing it, no, sir. 18 Q. 659,000 sounds like a lot per month, 19 correct? 20 A. Again, I don't know if that's a high amount 21 or not. 22 Q. Well, he says it right there, doesn't he? 23 He says: "A high volume store." 24 Do you see that? 25 A. I mean, that's what it says, yes, sir.</p>	<p style="text-align: right;">Page 69</p> <p>1 Store 2929, do you see that, in Hope Mills, North 2 Carolina? 3 A. Yes, sir. 4 Q. Do you see that? 5 It says in the parenthesis at the end: 6 "June SD405-1, Number 6 on oxyco/AP 5/35." 7 Do you see that? 8 A. Yes, sir. 9 Q. Do you know what that refers to? 10 A. I know that Jimmie had a report that he 11 looked at monthly that was a 405 report. So, I 12 mean, that -- he did do that. 13 Q. And what was on that monthly 405 report? 14 A. It was a report that he requested every 15 month and it had, like, information about stores. I 16 don't know. 17 I don't ever really remember seeing the 18 report. He handled that. I don't know what was on 19 it. I just know that it would show, like, for the 20 month what stores sold or -- I don't know if it was 21 dollar amount or what it was, but he -- that was his 22 405 report. 23 Q. Was that a report you received monthly? 24 A. I don't -- I don't know that he received it. 25 He asked for it to be printed every month. I think</p>



<p style="text-align: right;">Page 70</p> <p>1 it was available; but for us to get it at the DC, he</p> <p>2 had to request for it to be printed.</p> <p>3 Q. Do you know if others at the home office</p> <p>4 received that monthly report?</p> <p>5 A. I don't know if they received it or not.</p> <p>6 Q. Do you know who he would ask to print it?</p> <p>7 A. I don't -- I don't know who he would ask to</p> <p>8 print it. I mean, again, it was something he did</p> <p>9 for the AP side of stuff, so --</p> <p>10 Q. Can you -- what do you mean by "the AP side</p> <p>11 of stuff"?</p> <p>12 A. The asset protection.</p> <p>13 Q. Okay. Well, sir, it appears here that he</p> <p>14 says SD405, the store, right, Number 6 on the list.</p> <p>15 Do you see that? And Store 1935 is Number 15 on the</p> <p>16 oxycodone-30. Do you see that? It appears he's</p> <p>17 ranking the stores, correct?</p> <p>18 MR. MAZZA: Object; form.</p> <p>19 A. I don't know what -- I honestly don't know</p> <p>20 what those numbers mean.</p> <p>21 Q. Well, it appears he's ranking the stores</p> <p>22 based on their purchases of oxycodone products,</p> <p>23 correct?</p> <p>24 A. I don't know.</p> <p>25 Q. We'd have to ask him?</p>	<p style="text-align: right;">Page 72</p> <p>1 It appears from this document that Mr. Sherl</p> <p>2 did not cut that order, correct?</p> <p>3 A. Again, I didn't write this, so I don't know</p> <p>4 if he cut it or not.</p> <p>5 Q. Well, sir, if you turn to the e-mail above</p> <p>6 that from Ramona, do you see that, sir? It says:</p> <p>7 "Which orders were cut?" Right?</p> <p>8 Did you see: "Cut the orders for the stores</p> <p>9 highlighted in red below"?</p> <p>10 Do you see that?</p> <p>11 A. Yes, sir.</p> <p>12 MR. MAZZA: And, just for the record, the</p> <p>13 copy I have doesn't have any highlights on it.</p> <p>14 MR. BOWER: And that's correct. I don't</p> <p>15 believe the copy we received does either.</p> <p>16 BY MR. BOWER:</p> <p>17 Q. That's my question. If we could have that</p> <p>18 copy in red, we could tell which orders were cut,</p> <p>19 correct, sir?</p> <p>20 A. Yes.</p> <p>21 Q. And I believe I may have asked this, but</p> <p>22 maybe this refreshes your recollection. Do you see</p> <p>23 the e-mail from Brandon Worth to Ms. Sullins and</p> <p>24 Ms. Hiland?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. Go up, if you would, please, to the bullet</p> <p>3 point above Store 2525, the one that starts with</p> <p>4 "1935." Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. It says: "1935 has various strength of</p> <p>7 oxycodone ordered on 7/23/12 or 86 bottles."</p> <p>8 Do you see that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Would that order have been subject to a</p> <p>11 threshold cut?</p> <p>12 A. The oxycodone-30, if it were over 20, would</p> <p>13 be --</p> <p>14 Q. Well, sir, that doesn't describe what level</p> <p>15 of oxycodone is being purchased, correct? It just</p> <p>16 says "oxycodone"; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. All right. So we don't know whether it's</p> <p>19 oxy-30s or other strengths, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So from looking at this document, can you</p> <p>22 tell whether the order was cut? He doesn't say it</p> <p>23 was cut, correct?</p> <p>24 MR. MAZZA: Objection; form.</p> <p>25 Q. I'll strike that.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Do you recall what his position was or role</p> <p>2 was in suspicious order monitoring at this time?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. And then finally, going up to the top</p> <p>5 there, in the e-mail from Ramona to Jimmie, cc'ing</p> <p>6 yourself and Mr. Mullin again. Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. It says: "Jimmie, Per our phone</p> <p>9 conversation, please put together a daily</p> <p>10 spreadsheet with essential information needed to</p> <p>11 report any stores that order more than 20 bottles of</p> <p>12 oxy-30s."</p> <p>13 Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Was this simply reinforcing the policy we</p> <p>16 discussed earlier?</p> <p>17 MR. MAZZA: Objection to form.</p> <p>18 A. I -- it -- this was in -- this was</p> <p>19 referencing the e-mail you showed me earlier, so</p> <p>20 yes, sir.</p> <p>21 Q. And that e-mail is all the written policy we</p> <p>22 have, correct?</p> <p>23 A. That's -- I mean, that was my direction.</p> <p>24 Q. Right. Do you know who the -- going back to</p> <p>25 Brandon's e-mail below that -- the operators refers</p>

<p style="text-align: right;">Page 74</p> <p>1 to?</p> <p>2 THE COURT REPORTER: Operator?</p> <p>3 MR. BOWER: "Operators."</p> <p>4 BY MR. BOWER:</p> <p>5 Q. Brandon writes to Ramona: "Love the</p> <p>6 visibility here. Please provide daily in Excel</p> <p>7 format so we can share with operators."</p> <p>8 Do you see that?</p> <p>9 A. I don't know who he's referring to.</p> <p>10 Q. Did you receive these reports daily during</p> <p>11 the 2012 time period?</p> <p>12 A. I mean, I think Jimmie would typically CC</p> <p>13 the other management team on it.</p> <p>14 Q. That would include yourself, correct?</p> <p>15 A. Yes.</p> <p>16 Q. So these orders that Mr. -- that Ms. Sullins</p> <p>17 refers to as "being cut by the DC," sir, were those</p> <p>18 orders -- an order comes into the DC, correct? If</p> <p>19 the DC determined whether the order was too large,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. The DC cut the order, correct?</p> <p>23 A. On oxycodone-30, if it was over 20, yes,</p> <p>24 sir, we cut it to 20.</p> <p>25 Q. And then DC would then ship the order,</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Approximately.</p> <p>2 A. Approximately 4,000. I mean, that's -- I</p> <p>3 mean, that's about as close as I could guess. I</p> <p>4 don't know the exact amount.</p> <p>5 Q. And it was up to you, Mr. Sherl, and</p> <p>6 Mr. Mullin to review these orders daily, right?</p> <p>7 A. Yes.</p> <p>8 Q. No one else is reviewing the opioid orders</p> <p>9 for Walmart, correct?</p> <p>10 A. Not to my knowledge, no, sir.</p> <p>11 Q. So -- strike that.</p> <p>12 MR. MAZZA: Interpose a form objection to</p> <p>13 that last question.</p> <p>14 (Abernathy Exhibit 5 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. BOWER:</p> <p>17 Q. Sir, you've been handed what's been marked</p> <p>18 Exhibit 5. It's an e-mail from yourself to</p> <p>19 Mr. Dean, Mr. Chapman, Ms. Auldridge and Mr. Mullin,</p> <p>20 ending in Bates number 9423. The subject is "Over</p> <p>21 20 Report," and the attachment is Bates number</p> <p>22 9242, which is the report, correct, sir?</p> <p>23 A. This -- I'm sorry. What? What were you</p> <p>24 asking?</p> <p>25 Q. Is the attachment to this e-mail the -- you</p>
<p style="text-align: right;">Page 75</p> <p>1 correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. In other words, the DC was shipping a</p> <p>4 portion of the order, correct?</p> <p>5 A. We were shipping 20 bottles to the -- if</p> <p>6 they had ordered more than that, we only shipped</p> <p>7 them 20.</p> <p>8 Q. So if they ordered 30, you would ship 20,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Which would be a portion of 30, right?</p> <p>12 A. Well, yes.</p> <p>13 Q. Did you have any understanding during any</p> <p>14 time period, either 2012 or since, of why the focus</p> <p>15 was on oxy-30s?</p> <p>16 A. No, sir.</p> <p>17 Q. Did you ever ask about why not other</p> <p>18 strengths of oxy?</p> <p>19 A. No, sir.</p> <p>20 Q. You weren't aware of the epidemic, correct?</p> <p>21 MR. MAZZA: Objection; form.</p> <p>22 A. No, sir.</p> <p>23 Q. How many pharmacies did Walmart have</p> <p>24 nationwide in 2012?</p> <p>25 A. In 2012?</p>	<p style="text-align: right;">Page 77</p> <p>1 see it has a cover sheet because it was produced in</p> <p>2 native, right?</p> <p>3 A. Okay.</p> <p>4 Q. And then does that appear to you to be an</p> <p>5 Over 20 Report?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So just take a moment, then, and</p> <p>8 review that and let me know when you've had a chance</p> <p>9 to take a look.</p> <p>10 Have you had a chance to review it, sir?</p> <p>11 A. Yes.</p> <p>12 Q. This is an example of a situation where you</p> <p>13 may have been in the office before Mr. Sherl?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Had there been any change since the</p> <p>16 prior e-mail we looked at in July of 2012 with</p> <p>17 respect to who is responsible for these daily 20</p> <p>18 reports?</p> <p>19 A. No, sir.</p> <p>20 Q. It was still whoever got into the office</p> <p>21 first?</p> <p>22 A. Yes, sir.</p> <p>23 Q. If you got in the office first, would you</p> <p>24 work on the reports together or was it your</p> <p>25 responsibility to complete the report?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. It was my responsibility.</p> <p>2 Q. So let's say you got in the office first.</p> <p>3 And what would Mr. Sherl be doing with his day if he</p> <p>4 wasn't reviewing the reports?</p> <p>5 A. Typically, he wouldn't be there.</p> <p>6 Q. And then the vice versa, what if it was a</p> <p>7 day when he got in first and what was your -- what</p> <p>8 would you do if you weren't doing the reports?</p> <p>9 A. Whatever other duties I had to do that day.</p> <p>10 You know, checking on my associates, you know,</p> <p>11 planning for events if that was something that was</p> <p>12 going on, whatever my general manager asked me to</p> <p>13 do, making sure that the process was running</p> <p>14 smoothly, were the systems up and working, those</p> <p>15 types of things.</p> <p>16 Q. So if Mr. Sherl is there, you have no</p> <p>17 responsibility for these daily reports, correct?</p> <p>18 A. I did -- if he came in first, he did them,</p> <p>19 so --</p> <p>20 Q. Okay. So on this example on 2/12/13 we're</p> <p>21 looking at here, it was your decision whether to cut</p> <p>22 any orders, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you did not cut any orders, correct?</p> <p>25 A. According to the e-mail, I didn't.</p>	<p style="text-align: right;">Page 80</p> <p>1 looked on -- at each item in their bottle.</p> <p>2 Q. And that was because Walmart had a strict</p> <p>3 policy that was based on a threshold number,</p> <p>4 correct?</p> <p>5 A. The direction given to me was to cut</p> <p>6 anything Over 20 bottles on the 30, report anything</p> <p>7 over 50 bottles of anything else.</p> <p>8 Q. And therefore the direction was to not</p> <p>9 report any order under 50 bottles unless it was</p> <p>10 oxy-30, correct?</p> <p>11 A. Not to report anything under 50 for anything</p> <p>12 other than oxy-30, yes, sir.</p> <p>13 Q. And when you say report, what do you mean?</p> <p>14 A. To notify these people on this list.</p> <p>15 Q. So it would be notify and either wait and</p> <p>16 notify, and if you didn't hear anything, then to</p> <p>17 ship?</p> <p>18 A. To notify and wait and if I didn't hear</p> <p>19 anything, I just shipped. I didn't notify that I</p> <p>20 shipped it.</p> <p>21 Q. During this time period, 2013 time period,</p> <p>22 about how often would you be responsible for the</p> <p>23 daily Over 20 Reports?</p> <p>24 A. I don't recall. I don't know.</p> <p>25 Q. Do you recall it being once a week, once a</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Well, do you have any reason to believe the</p> <p>2 e-mail is inaccurate?</p> <p>3 A. No, but I don't -- I mean that was a long</p> <p>4 time ago. I mean, if that's what the e-mail says,</p> <p>5 so --</p> <p>6 Q. In reviewing these orders, sir, what</p> <p>7 criteria would you have used to determine whether to</p> <p>8 cut an order?</p> <p>9 A. So if it was an oxy-30 over 20, I would cut</p> <p>10 it to 20; and then anything over 50, I sent it to</p> <p>11 Greg, George, Donna, and Mike; and then, you know,</p> <p>12 waited to hear a response from them, if there was</p> <p>13 something I needed to do with it. If I didn't hear</p> <p>14 a response, we sent it to the store.</p> <p>15 Q. And anything under 50, you would have just</p> <p>16 sent it?</p> <p>17 A. Yes.</p> <p>18 Q. No review?</p> <p>19 A. Except for oxycodone 30, we would cut that;</p> <p>20 but for all other than that, yes.</p> <p>21 Q. Would you have considered, for example,</p> <p>22 whether a store ordered different strengths of oxy</p> <p>23 that would have been summed to over 50? For</p> <p>24 example, 29 oxy-10s and 29 oxy-5s?</p> <p>25 A. I didn't look at it based on that. I just</p>	<p style="text-align: right;">Page 81</p> <p>1 month?</p> <p>2 A. I mean, I don't recall doing it a lot, but I</p> <p>3 don't know.</p> <p>4 Q. When you did happen to do one of these</p> <p>5 reports, would you save the report anywhere?</p> <p>6 A. We would save the spreadsheet into a file.</p> <p>7 Q. Do you recall where that file is located?</p> <p>8 Was it a centrally located file, for example?</p> <p>9 A. It was -- yeah, it was just in a folder that</p> <p>10 we could all get to on the system.</p> <p>11 Q. And your instructions were to save the</p> <p>12 reports in that file, correct?</p> <p>13 A. To save the spreadsheets, yes.</p> <p>14 Q. Do you know whether those spreadsheets are</p> <p>15 still available?</p> <p>16 A. I -- I mean, I think they are. I haven't</p> <p>17 looked.</p> <p>18 Q. But you would assume they would be, correct?</p> <p>19 A. Yes.</p> <p>20 Q. No reason to delete them, right?</p> <p>21 A. I haven't deleted them, no.</p> <p>22 Q. Have you been asked about them in connection</p> <p>23 with this case?</p> <p>24 MR. MAZZA: I would caution the witness not</p> <p>25 to disclose any communications that he's had with</p>

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1 counsel.  
 2 BY MR. BOWER:  
 3 Q. It's just a yes-or-no question. You can  
 4 answer the question.  
 5 A. I have been asked about them, but I don't  
 6 know what in regards to.  
 7 (Abernathy Exhibit 6 was marked for  
 8 identification.)  
 9 BY MR. BOWER:  
 10 Q. Before I -- before you get to this document,  
 11 who asked you about them?  
 12 A. I don't remember.  
 13 Q. Do you remember whether it was an attorney?  
 14 A. No, I don't remember.  
 15 Q. Do you remember approximately when you were  
 16 asked about them?  
 17 A. It's been a while ago.  
 18 Q. More than a month?  
 19 A. It's been more than a month.  
 20 Q. More than a year?  
 21 A. I don't remember. I don't --  
 22 Q. Do you think it was over the summer? Does  
 23 that help at all?  
 24 A. It seems like it was before that, but I  
 25 don't know.

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1 Q. But it would have been your expectation that  
 2 these reports still exist, correct?  
 3 A. Yes.  
 4 Q. You've been handed what's been marked as  
 5 Exhibit 6, an e-mail from yourself to Mr. Beam,  
 6 Mr. Chapman, Ms. Auldridge, Mr. Mullin and  
 7 Ms. Spruell ending in 9987.  
 8 It appears to be another Over 20 Report, and  
 9 the report is attached. So just take another moment  
 10 to review this and let me know when you've had a  
 11 chance to complete your review.  
 12 Have you had a chance to review it, sir?  
 13 A. Yes, sir.  
 14 Q. Let me know if you need another minute. I  
 15 don't mean to rush you.  
 16 A. Yes, sir, that's fine.  
 17 Q. Okay. This is another example of a day when  
 18 you were responsible for the Over 20 Report,  
 19 correct?  
 20 A. Yes, sir, this is -- would -- yes, sir.  
 21 Q. Okay. And in the summary you provide, it  
 22 appears that you provide an excerpt from some  
 23 spreadsheet.  
 24 Do you see that?  
 25 A. Yes, sir.

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1 Q. Do you know where you would have pulled that  
 2 data from?  
 3 A. We would have pulled that from our Reddwerks  
 4 system, the system that holds our orders.  
 5 Q. Do you know how far back that Reddwerks has  
 6 data from?  
 7 A. I don't know. It -- we had immediate access  
 8 to it for about 15 days back. We had another --  
 9 there was a -- that was immediately within the  
 10 system.  
 11 There was -- we could go back I think three  
 12 years. If we accessed a different place in the  
 13 Reddwerks system, it would allow us to go back and  
 14 look at that.  
 15 Q. In the third bullet point, you referenced  
 16 the stores ordered since March 2013.  
 17 Do you see that?  
 18 A. Yes.  
 19 Q. Is that something you reviewed in  
 20 considering whether to cut the order?  
 21 A. No, sir.  
 22 Q. Is there a reason you're including that in  
 23 the e-mail?  
 24 A. I believe it was asked by our global  
 25 investigations team to add that information in

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1 there. So when we sent this over, I believe they  
 2 were using that information. They -- know they  
 3 were -- it had to be in a specific format because  
 4 they were taking that information and putting it in  
 5 something, and it had to be in a special format.  
 6 But I believe they asked us for that  
 7 information because they didn't have the access to  
 8 the Reddwerks system.  
 9 Q. Do you know who was on that global  
 10 investigations team during this time period?  
 11 A. Greg Beam is the person we sent it to.  
 12 Q. Here, you have an example of an order with  
 13 50 bottles, correct, of oxycodone 15 mg. Do you see  
 14 that second bullet point there says Store 2113,  
 15 Phoenix, Arizona, ordered 50 bottles of oxycodone  
 16 15mg.  
 17 A. Yes.  
 18 Q. Do you see that?  
 19 You decided not to cut that order, correct?  
 20 A. Correct.  
 21 Q. What criteria did you use to determine  
 22 whether that order should be cut or not?  
 23 A. I didn't -- I didn't determine whether it  
 24 should be cut or not. I was just providing that  
 25 information to the global investigations team.

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1 Q. So because it was 50 bottles and not 51, you  
 2 had no ability to cut the order, correct?  
 3 A. I didn't -- I didn't cut an order unless  
 4 they told me to cut it.  
 5 Q. Unless it was an oxy-30?  
 6 A. Unless it was the direction given.  
 7 Q. So even if this order had been an order for  
 8 70 bottles, you yourself wouldn't have been the one  
 9 to decide whether to cut it, correct?  
 10 A. No, sir.  
 11 Q. That would have been the other folks on this  
 12 e-mail, correct?  
 13 A. Yes, sir.  
 14 Q. If they hadn't gotten back to you, you would  
 15 have shipped the order, correct?  
 16 A. Yes, sir.  
 17 Q. I just have a few questions on the  
 18 spreadsheet itself.  
 19 A. Okay.  
 20 Q. A few of the columns -- let me ask you this  
 21 question.  
 22 These columns at the top, starting with  
 23 "Store" all the way on the left and ending with "Web  
 24 Form" on the right -- do you see that?  
 25 MR. MAZZA: Mr. Bower, I assume the column

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1 headers in your copy are also cut off, right?  
 2 MR. BOWER: Oh, no, they're not. We'll get  
 3 a clean copy for the record.  
 4 MR. MAZZA: Take a look at it. You can make  
 5 out the bottom half of it. So it might be  
 6 helpful if you just walk through it is.  
 7 MR. BOWER: Okay. Sure, yeah, I apologize  
 8 for that. It's a copying error.  
 9 BY MR. BOWERS:  
 10 Q. The columns, I will just read them out so  
 11 that we can all be on the same page. They are  
 12 Store, City, State, Item Number, and NDC,  
 13 description, quantity ordered -- sorry, not quantity  
 14 ordered -- it's QTY Order, QTY Sent, Four Week,  
 15 Total and Web Form.  
 16 I don't need to go through each one of  
 17 those. I just want to ask if you recall whether  
 18 there were other column headings in the Reddwerks  
 19 system that may not appear on this printout.  
 20 A. No, sir.  
 21 Q. And when you were deciding or reviewing  
 22 these orders, did you ever consider whether one  
 23 store may have ordered -- had multiple orders on  
 24 this list?  
 25 MR. MAZZA: Object; form.

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1 BY MR. BOWERS:  
 2 Q. For example, if you look at the column all  
 3 the way on the left, Store 842, in Pueblo, do you  
 4 see that one?  
 5 A. Yes, sir.  
 6 Q. It appears the first time for oxycodone 15  
 7 mgs and oxycodone/APAP5.  
 8 Do you see that?  
 9 A. Yes.  
 10 MR. MAZZA: I'm sorry, Mr. Bower, I see  
 11 the -- maybe I'm --  
 12 MR. BOWER: 842.  
 13 MR. MAZZA: I've got it. Sorry.  
 14 BY MR. BOWER:  
 15 Q. I'm wondering, in reviewing these orders,  
 16 whether you considered whether that store, for  
 17 example, had multiple orders Over 20 in considering  
 18 whether to cut any orders or to report any orders.  
 19 A. So I didn't cut them. I just reported that  
 20 this is what they had. So that's what this was.  
 21 Q. Was there ever a circumstance in your  
 22 experience where, other than with oxy-30s, where an  
 23 order under 50 bottles was cut?  
 24 A. I mean, I don't recall any but, I mean,  
 25 there was -- there's a lot of orders. I don't -- I

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1 mean I wasn't there every day.  
 2 MR. MAZZA: Interpose a form objection to  
 3 that last question.  
 4 BY MR. BOWER:  
 5 Q. I appreciate your answer. I'm not asking --  
 6 I'm just asking if you recall it ever happening.  
 7 A. I don't recall.  
 8 MR. MAZZA: Same objection.  
 9 Q. Sir, as you sit here today, can you explain  
 10 to us how long Walmart followed this policy of  
 11 preparing the Over 20 Reports?  
 12 A. Seems like we started in 2012, and we did  
 13 that until 2013 or '14. Our Reddwerks system was  
 14 able to flag those orders for us, so we didn't -- we  
 15 didn't have to do the process we were doing.  
 16 Q. So at some point in 2013 and 2014 the  
 17 Reddwerks system was used to automatically cut any  
 18 oxy-30 orders Over 20; is that correct?  
 19 A. I don't -- I don't think it automatically  
 20 cut those. It just flagged them for us to send to  
 21 people to review.  
 22 Q. Okay. So how -- how did that represent a  
 23 change, then, in your experience?  
 24 A. Before, we were taking the orders for the  
 25 day and we were exporting those to a spreadsheet.



<p style="text-align: right;">Page 90</p> <p>1 The change occurred when there was a place put into</p> <p>2 Reddwerks that -- those same criteria we were</p> <p>3 filtering for, it would automatically flag those for</p> <p>4 us.</p> <p>5 Q. Okay. I think I understand. So it just</p> <p>6 saved you a step, correct?</p> <p>7 A. Yes.</p> <p>8 Q. But the information that you were reviewing</p> <p>9 didn't change, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Policy didn't change, right?</p> <p>12 A. Correct.</p> <p>13 Q. Has the policy changed since 2012?</p> <p>14 A. So what the system allowed us to do, I don't</p> <p>15 feel that it changed because it just made it so that</p> <p>16 instead of me filtering and sending a spreadsheet to</p> <p>17 the people that needed to see it, the system</p> <p>18 automatically flagged those and then we just</p> <p>19 through -- electronically through the system sent</p> <p>20 those to the people who needed to see that, so it</p> <p>21 didn't change.</p> <p>22 (Abernathy Exhibit 7 was marked for</p> <p>23 identification.)</p> <p>24 BY MR. BOWER:</p> <p>25 Q. Sir, you've been handed what's been marked</p>	<p style="text-align: right;">Page 92</p> <p>1 e-mail, was there any part of Walmart's suspicious</p> <p>2 order monitoring process that you were aware of?</p> <p>3 A. No, sir.</p> <p>4 Q. I just want to see if we can break down some</p> <p>5 of this so we can understand what -- how this</p> <p>6 process worked. Okay?</p> <p>7 What does WPM refer to?</p> <p>8 A. WPM is our Reddwerks system.</p> <p>9 Q. So that's Reddwerks. Okay. That's helpful.</p> <p>10 And what is the historical items data tab in</p> <p>11 COSOS?</p> <p>12 A. Historical items data is a tab that would be</p> <p>13 in our controlled substance ordering system, where</p> <p>14 we would go back to get the historical data that I</p> <p>15 had talked about earlier, where we would have to go</p> <p>16 somewhere else to get that.</p> <p>17 Q. Okay. So the -- and you refer to it in here</p> <p>18 as CSOS, correct?</p> <p>19 A. CSOS, yes, sir.</p> <p>20 Q. And that system is different that Reddwerks,</p> <p>21 correct?</p> <p>22 A. It's by the same company as Reddwerks but a</p> <p>23 different application.</p> <p>24 Q. And it's different data, correct?</p> <p>25 A. It deals with the electronic 222 forms.</p>
<p style="text-align: right;">Page 91</p> <p>1 as Exhibit 7, an e-mail from yourself to others,</p> <p>2 including Ms. Spruell, Ms. Auldridge, Jason Wyrick,</p> <p>3 and Edward O'Brian, ending in Bates number 9872.</p> <p>4 The e-mail is dated October 14th, 2013.</p> <p>5 Take a moment to review the e-mail if you</p> <p>6 would, and then I can tell you my first question</p> <p>7 will be: What is an Over 40 Report.</p> <p>8 Have you had a chance to review it, sir?</p> <p>9 A. I just need to read the top part.</p> <p>10 Q. Oh, sure. Apologize.</p> <p>11 A. Okay.</p> <p>12 Q. All right, sir. Thank you.</p> <p>13 What process are you describing in your</p> <p>14 e-mail to Donna?</p> <p>15 A. It looks like the process for our Over 20</p> <p>16 Report.</p> <p>17 Q. And that process is Walmart's policy and</p> <p>18 procedure for suspicious order monitoring for C2</p> <p>19 narcotics, correct?</p> <p>20 MR. MAZZA: Objection; form.</p> <p>21 A. That's the process that, from the direction</p> <p>22 we were given in the e-mail from Ramona, to list</p> <p>23 those and cut anything of oxy-30, 20 or more back to</p> <p>24 20.</p> <p>25 Q. And other than what you describe in this</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. And then Number 2, you describe a process</p> <p>2 for the identification of unusual orders, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. You say: We look at the -- I believe that's</p> <p>5 supposed to be quotes -- the Over 20 Report, and any</p> <p>6 order with more than 50 bottles we look at the</p> <p>7 store's history to see if the amount is within their</p> <p>8 normal ordering pattern.</p> <p>9 Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What criteria would you use to determine</p> <p>12 whether the order was within their normal ordering</p> <p>13 patterns?</p> <p>14 A. We would look at, like, their four-week</p> <p>15 average and just see, I mean, does it seem to be</p> <p>16 within that.</p> <p>17 Q. That was something you were doing, correct?</p> <p>18 A. We would look at it, yes, sir.</p> <p>19 Q. You and Mr. Sherl were making that -- either</p> <p>20 you or Mr. Sherl would make that decision on a daily</p> <p>21 basis, correct?</p> <p>22 MR. MAZZA: Objection; form.</p> <p>23 A. We weren't making any decisions. We were</p> <p>24 just looking at it.</p> <p>25 Q. You were determining whether those orders</p>

<p style="text-align: right;">Page 94</p> <p>1 were within their normal ordering patterns, correct?</p> <p>2 A. Yes.</p> <p>3 Q. You were doing that, right?</p> <p>4 A. On the days I did that, yes.</p> <p>5 Q. And were there any written criteria you used</p> <p>6 to make those decisions?</p> <p>7 A. I don't remember looking at any, no.</p> <p>8 Q. Well, how would you determine whether an</p> <p>9 order was within a normal ordering pattern?</p> <p>10 A. Just from my experience.</p> <p>11 Q. What experience is that, sir?</p> <p>12 A. Well, working with the C2 drugs and the</p> <p>13 distribution of those, just looking at orders and</p> <p>14 just, you know, if something looked unusual, then</p> <p>15 that's what I looked at.</p> <p>16 Q. Sir, were you aware by this time in 2013 the</p> <p>17 country was in the middle of an opioid epidemic?</p> <p>18 A. No, sir.</p> <p>19 Q. Did you ever look at ordering patterns in</p> <p>20 1997, 1998?</p> <p>21 A. No, sir, I was --</p> <p>22 Q. What ordering patterns were you looking at?</p> <p>23 MR. MAZZA: Objection; form.</p> <p>24 A. I was looking at the information we had</p> <p>25 available to us.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. We, whoever was doing the report that day.</p> <p>2 Q. Either you or Mr. Sherl, correct?</p> <p>3 A. (Nodding head.)</p> <p>4 Q. And who was the RX manager? Is that the</p> <p>5 individual pharmacies?</p> <p>6 A. Yes.</p> <p>7 MR. MAZZA: Mr. Bower, could you just slow</p> <p>8 just a bit?</p> <p>9 MR. BOWER: Sure.</p> <p>10 MR. MAZZA: Thank you.</p> <p>11 BY MR. BOWER:</p> <p>12 Q. Did you have a list of questions that you</p> <p>13 would ask them to determine whether the amount</p> <p>14 requested was really needed or an ordering mistake?</p> <p>15 A. I didn't have a set list I asked. I just</p> <p>16 asked questions about the order.</p> <p>17 Q. What sorts of questions would you ask?</p> <p>18 A. Well, primarily did you mean to order this</p> <p>19 many? Is this correct? Depending on their answer,</p> <p>20 however the conversation went after that. I mean,</p> <p>21 it wasn't scripted or anything like that.</p> <p>22 Q. And you say: If needed, what is the reason</p> <p>23 for the increase?</p> <p>24 Do you see that?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And what information did you have available</p> <p>2 to you? How far back did it go?</p> <p>3 A. The four-week --</p> <p>4 MR. MAZZA: Same objection.</p> <p>5 A. The four-week report that we would go back</p> <p>6 and look at or that we would run through Reddwerks.</p> <p>7 Q. So your reference here to normal ordering</p> <p>8 patterns refers to the prior four weeks; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. You didn't have access to anything else,</p> <p>12 right?</p> <p>13 A. I didn't look at anything else.</p> <p>14 Q. And then step three, sir, you say: Once we</p> <p>15 identify an unusual order -- correct? That's you</p> <p>16 again, correct? You or Mr. Sherl, correct? -- you</p> <p>17 contact the RX manager, correct?</p> <p>18 MR. MAZZA: Same objection.</p> <p>19 BY MR. BOWER:</p> <p>20 Q. These are your words, correct, sir?</p> <p>21 A. This is the e-mail I typed.</p> <p>22 Q. Who is the "we" there? Does that refer to</p> <p>23 yourself and Mr. Sherl?</p> <p>24 A. Yes.</p> <p>25 Q. Does it refer to anybody else?</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. What did -- in your judgment would have been</p> <p>2 a valid reason for an increase during this time</p> <p>3 period?</p> <p>4 MR. MAZZA: Objection; form.</p> <p>5 BY MR. BOWER:</p> <p>6 Q. Strike that.</p> <p>7 During this time period, in making a</p> <p>8 decision, how would you have determined whether the</p> <p>9 reason for the increase justified the order?</p> <p>10 A. I don't think I was gathering it to make a</p> <p>11 decision. I was gathering it and asking the</p> <p>12 questions so that I could pass that along to other</p> <p>13 people.</p> <p>14 Q. Well, you say in the next sentence here, you</p> <p>15 say: Depending on the answers.</p> <p>16 Correct?</p> <p>17 A. Yes.</p> <p>18 Q. So in some circumstances you would not</p> <p>19 involve other people, correct?</p> <p>20 A. To cut it, no.</p> <p>21 Q. What do you mean by that?</p> <p>22 A. Well, I wouldn't cut the order unless</p> <p>23 someone told me, hey, to cut that.</p> <p>24 Q. Well, what -- what if you called the RX</p> <p>25 manager and they said the order was an error? Would</p>

<p style="text-align: right;">Page 98</p> <p>1 you cut it?</p> <p>2 MR. MAZZA: Objection; form.</p> <p>3 A. We would let the people know -- we would</p> <p>4 send that off and say this is why the order was that</p> <p>5 high; do we need to cut it?</p> <p>6 Q. And which people would you let know?</p> <p>7 A. I would typically call our home office team</p> <p>8 or -- that's where I started, you know, and talked</p> <p>9 to Ramona or one of those people.</p> <p>10 Q. Would you call them or would you e-mail</p> <p>11 them?</p> <p>12 A. Typically, I would call them, because I --</p> <p>13 because we were filling the orders, I wanted to make</p> <p>14 sure that we took care of the order, you know, in a</p> <p>15 timely manner so that, you know, at the end of the</p> <p>16 day we weren't waiting or holding anything that</p> <p>17 needed to be shipped, that we could fix it while we</p> <p>18 had it in our possession.</p> <p>19 Q. But that was your priority, right, to fix it</p> <p>20 in a timely manner, correct?</p> <p>21 MR. MAZZA: Objection to form.</p> <p>22 BY MR. BOWER:</p> <p>23 Q. You wanted to get these shipped that day,</p> <p>24 right?</p> <p>25 A. I -- I wanted to -- I wanted to make sure</p>	<p style="text-align: right;">Page 100</p> <p>1 the market manager?</p> <p>2 A. Maybe if I couldn't contact a pharmacy</p> <p>3 manager. Sometimes, when we called, the pharmacy</p> <p>4 manager was off that day and, you know, it was a</p> <p>5 pharmacist who was filling in from another store to</p> <p>6 cover, they wouldn't know anything about the order.</p> <p>7 So I would try to contact the market manager to find</p> <p>8 out what I needed to do with -- you know, ask the</p> <p>9 questions about the order.</p> <p>10 Q. Sir, that's not what you're writing here.</p> <p>11 You're stating: Depending on the answers from the</p> <p>12 RX manager, you're contacting the market manager,</p> <p>13 right? You're not writing if I can't contact the RX</p> <p>14 manager, I'll contact the market manager, right?</p> <p>15 So which one is it?</p> <p>16 MR. MAZZA: Objection; form.</p> <p>17 A. I mean --</p> <p>18 Q. I'm just trying to understand what the</p> <p>19 policy was. What was your policy and procedure?</p> <p>20 A. It was to, you know, for the orders that we</p> <p>21 had that showed up, we would try to call and get</p> <p>22 answers to make sure the order is accurate, so, you</p> <p>23 know, if -- depending on the situation as to who I</p> <p>24 had to call or contact or get ahold of.</p> <p>25 I mean, it was -- it was all very based on</p>
<p style="text-align: right;">Page 99</p> <p>1 the order was correct and accurate, so --</p> <p>2 Q. Right.</p> <p>3 These are orders that have already been</p> <p>4 flagged, correct? Your first -- first number there</p> <p>5 says: We currently are not using the flagged order</p> <p>6 items in WPM.</p> <p>7 These are other items that have been</p> <p>8 flagged?</p> <p>9 MR. MAZZA: Objection; form.</p> <p>10 Q. In other words -- I'll strike that.</p> <p>11 In other words, these are items you are</p> <p>12 reviewing because they have been flagged by</p> <p>13 Walmart's policy, correct?</p> <p>14 A. Yes.</p> <p>15 Q. You say you involve other people, from the</p> <p>16 marketing manager to HO Health &amp; Wellness managers.</p> <p>17 Do you see that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Who would you decide who to involve? Strike</p> <p>20 that.</p> <p>21 How would you decide who to involve?</p> <p>22 A. Again, I think it would depend on the</p> <p>23 conversation that I had as to who I needed to talk</p> <p>24 to to get the direction that I needed to get.</p> <p>25 Q. So under what circumstance would you contact</p>	<p style="text-align: right;">Page 101</p> <p>1 what the situation was that day, and I believe what</p> <p>2 she was -- I was trying to do was reflect that in my</p> <p>3 e-mail, to show, you know, this is what we do, you</p> <p>4 know. But situations are different each time, so I</p> <p>5 couldn't write every situation down.</p> <p>6 Q. I appreciate that.</p> <p>7 And so it's really a matter of you trying to</p> <p>8 deal with the situation you're faced with, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Trying to get the orders cleared and</p> <p>11 shipped, right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Again, just going back to this issue, if you</p> <p>14 contacted someone and they didn't get back to you,</p> <p>15 you would ship the order, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. And you would ship it that day,</p> <p>18 right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And indeed I think part of what</p> <p>21 you're saying is reflected in 4 where you say:</p> <p>22 Other unusual orders are cut only after talking to</p> <p>23 the RX operation and HO managers, correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. So only if they affirmatively told you to</p>

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<p>1 cut an order would you do so, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Otherwise they would be shipped?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you know whether during this time any</p> <p>6 orders that -- -- strike that.</p> <p>7 Do you know whether during this time if an</p> <p>8 order was cut whether it was reported to the DEA?</p> <p>9 A. No, sir.</p> <p>10 Q. No, you don't know; or no, you don't believe</p> <p>11 it was reported?</p> <p>12 A. No, sir, I don't know.</p> <p>13 Q. Do you know, if it was reported, who would</p> <p>14 have done the reporting?</p> <p>15 A. No, sir, I don't know.</p> <p>16 Q. Do you know who would know the answer to</p> <p>17 that question?</p> <p>18 A. No, sir.</p> <p>19 Q. The document -- the last document in that</p> <p>20 exhibit -- in Exhibit 7, ending in Bates number</p> <p>21 9875, is this kind of a step-by-step procedure that</p> <p>22 you put together to put in writing how you would</p> <p>23 prepare the reports?</p> <p>24 A. It looks like a step-by-step process, yes,</p> <p>25 sir.</p>	<p>1 those orders were cut?</p> <p>2 A. No.</p> <p>3 Q. None of your conversations with the</p> <p>4 pharmacies did anyone ever ask you that question?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. If a pharmacy's orders for oxy-30 was cut by</p> <p>7 Walmart, could they have placed an order with</p> <p>8 McKesson to get that product?</p> <p>9 A. I believe they had ways to place orders with</p> <p>10 McKesson.</p> <p>11 Q. There was nothing from Walmart preventing</p> <p>12 them from doing that, correct?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. And the same for ABDC, sir?</p> <p>15 A. Yes, sir.</p> <p>16 (Abernathy Exhibit 8 was marked for</p> <p>17 identification.)</p> <p>18 MR. MAZZA: Do you want to --</p> <p>19 MR. BOWER: Let's do.</p> <p>20 MR. BOWER: Can we go off the record for a</p> <p>21 minute.</p> <p>22 (Discussion off the record.)</p> <p>23 BY MR. BOWER:</p> <p>24 Q. All right, Mr. Abernathy, you've been handed</p> <p>25 what's been marked as Exhibit 8. It's just a cover</p>
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<p>1 Q. And -- I didn't mean to cut you off.</p> <p>2 And in looking at the attachment, it</p> <p>3 references an Over 40 Report doc.</p> <p>4 Do you see, going back to the first page,</p> <p>5 the attachment line?</p> <p>6 Is this -- did you mean to be Over 20</p> <p>7 Report, or is this intentionally referring to an</p> <p>8 Over 40 Report?</p> <p>9 A. It must be -- I may have hit 40. I don't</p> <p>10 know of on Over 40. It would have been Over 20.</p> <p>11 Q. And this is the process you would have used</p> <p>12 in the Reddwerks system?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Were the pharmacies aware of the thresholds</p> <p>15 for oxy-30?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. They would have been aware if they had made</p> <p>18 an order for over the threshold, though, correct?</p> <p>19 They would have been aware the order was cut,</p> <p>20 correct?</p> <p>21 A. They would have known when they only got 20</p> <p>22 bottles they would have known, but I don't know</p> <p>23 who -- if it was communicated, who would have done</p> <p>24 that.</p> <p>25 Q. Did anyone ever communicate to you as to why</p>	<p>1 e-mail with an attachment, and the attachment is</p> <p>2 from Ms. Spruell to Nick Tallman, yourself, and</p> <p>3 Jason Wyrick.</p> <p>4 Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. If you look at the attachment, it refers to</p> <p>7 "Suspicious Order Monitoring Program."</p> <p>8 Do you see that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Under that, it says: "Work Group Progress</p> <p>11 Report."</p> <p>12 Do you see that, sir?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Do you know what this refers to?</p> <p>15 A. I -- I don't. I'd like a chance to read it,</p> <p>16 if I could.</p> <p>17 Q. Sure. That's -- why don't we do this, then.</p> <p>18 Why don't we take lunch now.</p> <p>19 MR. MAZZA: And come back here?</p> <p>20 MR. BOWER: Come back and start here since</p> <p>21 it seems to be a new area.</p> <p>22 THE VIDEOGRAPHER: Going off the record.</p> <p>23 The time is 12:12.</p> <p>24 (Recess from 12:12 p.m. until 12:53 p.m.)</p> <p>25 THE VIDEOGRAPHER: We're back on the record.</p>

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1 Beginning of Media File Number 3. The time is  
2 12:53.  
3 BY MR. BOWER:  
4 Q. We're back on the record, Mr. Abernathy.  
5 You understand you're still under oath, sir?  
6 A. Yes.  
7 Q. Why don't we take a moment on the record to  
8 review Exhibit Number 8, which is in front of you,  
9 which is where we left off before lunch. And I just  
10 want to get a general sense what this program or  
11 project was about that's reflected in the  
12 attachment.  
13 Q. Have you had a chance to review the  
14 document, sir?  
15 A. Yes, sir.  
16 Q. Okay. Do you need a few more minutes or  
17 you're --  
18 A. I'm good.  
19 Q. Okay. So this -- the attachment was sent by  
20 Ms. Spruell to Nick Tallman, yourself, and Jason  
21 Wyrick.  
22 Do you see that?  
23 A. Yes, sir.  
24 Q. Just generally speaking, do you have a  
25 recollection as to what this program or project was?

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1 A. I believe it -- it looks like it was the  
2 process of working up to more automation of our  
3 Reddwerks application for flagging orders.  
4 Q. So this is part of the movement we discussed  
5 earlier, from when you would run the report to  
6 yourself to have Reddwerks automate the report; is  
7 that correct?  
8 A. Yes, sir. That's what it looks like.  
9 Q. So I just have a couple more specific  
10 questions, then, with that understanding.  
11 You see under the first kind of title there  
12 in bold, underlined, "Overall Something Project  
13 Update"? Top of the page.  
14 Do you see that?  
15 A. Yes, sir.  
16 Q. The first bullet point says: "Project has  
17 been Socialized with Leadership."  
18 Do you know what that means?  
19 A. I mean, from what it says here, it would be  
20 that they discussed it with leadership.  
21 Q. And do you know who that leadership would  
22 refer to?  
23 A. No, sir.  
24 Q. Well, there is only three, four people at  
25 these meetings, correct, at this point?

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1 Ms. Spruell, Mr. Tallman, yourself and Mr. Wyrick,  
2 right?  
3 A. I mean, it looks like she sent it to us,  
4 yes.  
5 Q. Were you a part of this meeting?  
6 A. No, sir.  
7 Q. No? Okay.  
8 Were you familiar with the plan to have  
9 Reddwerks automate the reporting?  
10 A. I was -- yes, sir, they would, you know, ask  
11 us questions about how it works now. And it seems  
12 like they would, like, ask us for input to ideas or  
13 whatever.  
14 Q. Do you have any recollection as to when the  
15 process actually became automated at Reddwerks?  
16 A. I don't -- I don't remember the exact --  
17 like an exact date. It does seem like it was in  
18 that '13 -- 2013 or 2014 time period.  
19 Q. Okay. Okay. So under the process, then, it  
20 refers to Jason, Jeff and Ed.  
21 Do you see that?  
22 A. Yes, sir.  
23 Q. That refers to yourself, correct?  
24 A. Yes, sir.  
25 Q. And who is Jason?

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1 A. If it's the same Jason on the front, Jason  
2 Wyrick, he was the operations manager for 6001.  
3 Q. And Ed?  
4 A. Again, if it's -- well --  
5 Q. Did Nick Tallman go by Ed?  
6 A. No.  
7 Q. That was one of my questions. Do you know  
8 who Ed refers to? Is he possibly in charge of  
9 another process in another DC?  
10 A. There was an Ed who was an ops manager at  
11 6046, but I don't know if that's who she was talking  
12 about.  
13 Q. Did you know at this time -- this is in  
14 October 2013 -- if either Jason or Ed had  
15 responsibility for monitoring orders of hydrocodone?  
16 A. At this time, I don't know what -- what they  
17 monitored as far as hydrocodone. It wasn't a C2 at  
18 the time, so I don't know what they monitored.  
19 Q. Do you know if hydrocodone was being  
20 monitored at all at this time?  
21 A. I don't know.  
22 Q. So in the top of the next page -- and this  
23 is part of what I wanted to clear up today -- was  
24 the first bullet point references "Data  
25 Process-Possible Approach."



<p style="text-align: right;">Page 110</p> <p>1 Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. The first bullet point says: "Turn Off</p> <p>4 Reddwerks Order Alerts."</p> <p>5 Do you see that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. That suggests to me, at least, that</p> <p>8 Reddwerks order alerts have been already turned on.</p> <p>9 Is that not consistent with your</p> <p>10 recollection?</p> <p>11 MR. MAZZA: Objection; form.</p> <p>12 BY MR. BOWER:</p> <p>13 Q. I'll strike that. That's a poor question.</p> <p>14 Does this refresh your recollection as to</p> <p>15 whether the Reddwerks order alerts had been turned</p> <p>16 on by this date?</p> <p>17 A. It doesn't, no.</p> <p>18 Q. Is it your recollection that during this</p> <p>19 time period either you or Mr. Sherl would have been</p> <p>20 still running the daily 20 reports?</p> <p>21 A. According to the date, we would have been</p> <p>22 still running those.</p> <p>23 Q. Okay. And then at the bottom it says:</p> <p>24 Tim --</p> <p>25 Is it Koch, under people there?</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I don't know.</p> <p>2 Q. So you don't know as you sit here today</p> <p>3 whether Mr. Koch was getting those cut reports,</p> <p>4 correct?</p> <p>5 A. Yes, sir, I don't -- I don't know.</p> <p>6 (Abernathy Exhibit 9 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. BOWER:</p> <p>9 Q. Sir, you've been handed what's been marked</p> <p>10 as Exhibit 9. It's an e-mail chain, the first page</p> <p>11 is ending in Bates number 17565.</p> <p>12 Just take a moment to review that. You</p> <p>13 weren't on the entirety of this chain, so my</p> <p>14 questions will focus on sort of where -- before you</p> <p>15 fall off, which starts with the e-mail from Ms. Gan</p> <p>16 on the second page of your attachment.</p> <p>17 Have you had a chance to read the document,</p> <p>18 sir?</p> <p>19 A. Yes.</p> <p>20 Q. I just want to know if we can start maybe on</p> <p>21 the second page of the exhibit, Ms. Gan -- it's an</p> <p>22 e-mail to Ms. Spruell, Mr. Mullin, yourself, Ramona</p> <p>23 Sullins, Ava Thomas and a person at Reddwerks.</p> <p>24 Do you see that?</p> <p>25 She says: Good morning. Thank you for a</p>
<p style="text-align: right;">Page 111</p> <p>1 A. I think it's Koch.</p> <p>2 Q. -- Koch will be responsible for making all</p> <p>3 required suspicious order reports to DEA.</p> <p>4 Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. After you received this document, did</p> <p>7 you begin to provide Mr. Koch with orders that you</p> <p>8 would be cutting because, for example, if they were</p> <p>9 oxy-30 orders that were over the threshold?</p> <p>10 A. I don't remember doing that. I mean, we</p> <p>11 sent the -- whatever the process was at the time, we</p> <p>12 continued that, sending it to the Global</p> <p>13 Investigation Team and the Asset Protection Team, my</p> <p>14 general manager and the compliance team.</p> <p>15 Q. And just so the record is clear, you sent</p> <p>16 them every time an order was cut, correct? You sent</p> <p>17 them an e-mail?</p> <p>18 A. We sent them one every day, yes, with what</p> <p>19 happened that day, yes.</p> <p>20 Q. All right.</p> <p>21 Q. Well, do you know as you sit here today</p> <p>22 whether Mr. Koch was on any of those e-mail lists</p> <p>23 that you've just described, whether Asset Protection</p> <p>24 Team, general manager or the compliance team or the</p> <p>25 Global Investigation Team?</p>	<p style="text-align: right;">Page 113</p> <p>1 productive meeting yesterday.</p> <p>2 A. Yes, sir.</p> <p>3 Q. Were you part of that meeting?</p> <p>4 A. I mean, I don't remember.</p> <p>5 Q. Do you recall during this general time frame</p> <p>6 in February 2014 discussions regarding enhancing the</p> <p>7 SOM process?</p> <p>8 A. I don't remember any specific meeting. I</p> <p>9 mean, during this time frame, I would be involved in</p> <p>10 some of the meetings; some of the meetings I would</p> <p>11 not; some I didn't attend. So I don't know. I</p> <p>12 don't remember being at a meeting discussing SOW</p> <p>13 preparations.</p> <p>14 Q. Do you know what SOW stands for?</p> <p>15 A. I don't know what it means.</p> <p>16 Q. Statement of work, potentially?</p> <p>17 A. I mean --</p> <p>18 Q. You don't know. You don't know, right?</p> <p>19 A. Right.</p> <p>20 Q. What about ISD?</p> <p>21 A. ISD is our information systems department.</p> <p>22 Q. Okay. Did they have to approve initiatives</p> <p>23 for suspicious order monitoring?</p> <p>24 A. Anything with the ISD department, I don't</p> <p>25 know. It was -- I mean, outside of what I've done.</p>

<p style="text-align: right;">Page 114</p> <p>1 I mean, I don't -- I didn't have any contact with</p> <p>2 ISD or what their job was on this project.</p> <p>3 Q. Well, do you know why Miranda is engaging</p> <p>4 the ISD team?</p> <p>5 MR. MAZZA: Objection; form.</p> <p>6 Go ahead.</p> <p>7 A. I don't know. I mean, Miranda would be the</p> <p>8 one who would be communicating to the ISD team for</p> <p>9 the project. She would be the one doing that. I</p> <p>10 don't know.</p> <p>11 Q. You don't know why she's doing that?</p> <p>12 A. No, sir.</p> <p>13 Q. Okay. But you did understand when you</p> <p>14 received this e-mail that you couldn't move forward</p> <p>15 until that team was engaged, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. All right. Well, do you know what was</p> <p>18 supposedly moving forward? What was going to</p> <p>19 happen?</p> <p>20 A. I believe it might have been to -- for</p> <p>21 the -- for the automated way we were going to do</p> <p>22 monitor orders in Reddwerks.</p> <p>23 Q. Well, sir, if you turn to the last page -- I</p> <p>24 believe the second to the last page of the exhibit,</p> <p>25 ending in 17568.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And including item combinations?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did you know that Reddwerks would</p> <p>5 track specific order levels and trigger an order</p> <p>6 alert if the cumulative order amount of a store and</p> <p>7 item combination reaches a determined threshold?</p> <p>8 A. I knew the thresholds were set based on item</p> <p>9 and -- item level, order level. I don't -- I mean,</p> <p>10 I -- that doesn't sound familiar --</p> <p>11 Q. Well, what was --</p> <p>12 A. -- the way it was read.</p> <p>13 Q. Well let me ask you this: Was the -- we</p> <p>14 spent some time today talking about the Over 20</p> <p>15 Reports, correct? Was this process ever implemented</p> <p>16 that altered that reporting process?</p> <p>17 A. It created a way for us not to have to</p> <p>18 manually create the spreadsheet and physically sort</p> <p>19 those in an Excel document. It flagged those orders</p> <p>20 for us in -- in the Reddwerks system and allowed us</p> <p>21 to then electronically send those orders over to the</p> <p>22 home office for review.</p> <p>23 Q. Did that new process incorporate these</p> <p>24 enhanced criteria here, including quantity level</p> <p>25 specific to each store and item combination?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you see that? The first line of the</p> <p>3 e-mail from Miranda to Kristy that's attached to the</p> <p>4 e-mail that includes you refers to our enhanced SOM</p> <p>5 process. Do you see that? SOMP process. Sorry.</p> <p>6 A. I'm sorry. I guess I don't -- which page?</p> <p>7 Q. Sorry. The page ending in 17568. Right.</p> <p>8 A. Yes, sir.</p> <p>9 Q. It says Miranda. That e-mail says:</p> <p>10 "Miranda, During our last call with Reddwerks, I</p> <p>11 promised to write out what I need Reddwerks to do to</p> <p>12 support our enhanced SOMP processes."</p> <p>13 Do you see that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Do you know what "enhanced SOMP processes"</p> <p>16 refers to?</p> <p>17 A. No, sir.</p> <p>18 Q. There was -- during this time period, was</p> <p>19 there a discussion at Walmart or at your DC facility</p> <p>20 regarding enhancing the suspicious order monitoring</p> <p>21 process?</p> <p>22 A. We were enhancing our order monitoring</p> <p>23 process. That's what I knew it as.</p> <p>24 Q. Did you know it as -- those enhancements to</p> <p>25 include quantity level specific to each store?</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Yes.</p> <p>2 Q. They did?</p> <p>3 So is it your understanding that after this</p> <p>4 date, those Over 20 Reports included these enhanced</p> <p>5 criteria?</p> <p>6 A. Yes. We moved away from the Over 20 Report</p> <p>7 into this new enhanced version of the Reddwerks.</p> <p>8 (Abernathy Exhibit 10 was marked for</p> <p>9 identification.)</p> <p>10 BY MR. BOWER:</p> <p>11 Q. Sir, you've been handed what's been marked</p> <p>12 as Exhibit 10, which is another Over 20 Report dated</p> <p>13 3/24/13.</p> <p>14 Take a moment to review that, if you would.</p> <p>15 I would note that it's approximately 20 days after</p> <p>16 Exhibit 9.</p> <p>17 My question -- my first question to you will</p> <p>18 be whether this report, in fact, incorporates those</p> <p>19 enhanced Reddwerks criteria we just discussed.</p> <p>20 A. No, sir. This is the way -- this is the way</p> <p>21 we were continuing -- we were doing it at the time.</p> <p>22 Q. That's what I just wanted to clear up.</p> <p>23 So it appears at least as of this date the</p> <p>24 new Reddwerks enhanced process hasn't been</p> <p>25 implemented yet, correct?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Correct.</p> <p>2 Q. Do you have any idea as to approximately</p> <p>3 when it, if ever, was implemented?</p> <p>4 A. I do know it was implemented. I don't know</p> <p>5 an exact time or date that it was. I know it was</p> <p>6 in -- it was about in this time frame that we</p> <p>7 switched to that.</p> <p>8 Q. Do you know why you were switching?</p> <p>9 A. No, sir. Just to make it more automated so</p> <p>10 we didn't have to continue to do -- you know, pull</p> <p>11 the orders and sort them like we were doing.</p> <p>12 Q. Well, the switch was also enhancement,</p> <p>13 right? It was considering more criteria, right?</p> <p>14 More data?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know why you were considering more</p> <p>17 data?</p> <p>18 A. No, sir.</p> <p>19 Q. Do you know why you were considering store</p> <p>20 and item combinations?</p> <p>21 A. No, sir.</p> <p>22 Q. Did you ever ask?</p> <p>23 A. No, sir.</p> <p>24 Q. Did you have any concerns it was because of</p> <p>25 the growing epidemic?</p>	<p style="text-align: right;">Page 120</p> <p>1 reports?</p> <p>2 A. We gathered the totals -- I'm sorry.</p> <p>3 We gathered the totals to send to the</p> <p>4 global -- the Global Investigation Group. We</p> <p>5 provided them with that information, so that's why I</p> <p>6 was gathering that data.</p> <p>7 Q. So if I --</p> <p>8 MR. MAZZA: I'm sorry, Mr. Bower, can you</p> <p>9 just clarify? Which exhibit are you referring to</p> <p>10 when you say the one previous with the four-week</p> <p>11 average?</p> <p>12 MR. BOWER: I know the other Over 20 Reports</p> <p>13 included the four-week average. I don't know if</p> <p>14 we used them.</p> <p>15 MR. MAZZA: Oh, okay. I thought you were</p> <p>16 saying among the exhibits we've looked at.</p> <p>17 MR. BOWER: Thank you. Let me clarify the</p> <p>18 record, then.</p> <p>19 BY MR. BOWER:</p> <p>20 Q. Sir, you're familiar that at least some Over</p> <p>21 20 Reports included a column of four-week average,</p> <p>22 correct?</p> <p>23 A. It's been a while since I've done one. I'm</p> <p>24 trying to remember if we --</p> <p>25 Q. Sir, did you review those -- any of those in</p>
<p style="text-align: right;">Page 119</p> <p>1 A. I -- I didn't know there was an epidemic.</p> <p>2 Q. Do you think anyone at Walmart knew?</p> <p>3 MR. MAZZA: Objection; form.</p> <p>4 A. I don't know.</p> <p>5 Q. No one ever talked about it?</p> <p>6 A. I didn't hear anybody talk about it.</p> <p>7 MR. MAZZA: Same objection. Sorry.</p> <p>8 Go ahead.</p> <p>9 BY MR. BOWER:</p> <p>10 Q. If you look at the Over 20 Report that's</p> <p>11 attached to this exhibit, you will see the four-week</p> <p>12 total.</p> <p>13 Is there a reason the four-week average</p> <p>14 isn't on this one?</p> <p>15 A. Is there -- I'm sorry. Repeat the question.</p> <p>16 Q. A few of the other Over 20 Reports, if you</p> <p>17 recall, included a four-week total and a four-week</p> <p>18 average. I noted that this one doesn't include a</p> <p>19 four-week average.</p> <p>20 A. Okay.</p> <p>21 Q. Was there a certain point in time where you</p> <p>22 decided to no longer consider the average and just</p> <p>23 look at the total?</p> <p>24 A. I'm not sure. I don't know.</p> <p>25 Q. Did you consider the total in running these</p>	<p style="text-align: right;">Page 121</p> <p>1 preparation for your deposition today?</p> <p>2 A. No. I mean --</p> <p>3 Q. Did you review any policies and procedures</p> <p>4 in preparation for your deposition?</p> <p>5 MR. MAZZA: I'm going to object. It calls</p> <p>6 for protected work product. Instruct the witness</p> <p>7 not to answer.</p> <p>8 BY MR. BOWER:</p> <p>9 Q. Did you review any documents on your own,</p> <p>10 outside the presence of your counsel in preparation</p> <p>11 for your deposition?</p> <p>12 A. No, sir.</p> <p>13 Q. Did you talk to anybody in preparation for</p> <p>14 your deposition, other than counsel?</p> <p>15 A. I'm sorry. Say that again.</p> <p>16 Q. Other than counsel, your attorneys here</p> <p>17 today and the attorneys at Walmart, did you talk to</p> <p>18 anybody else in preparation for your deposition?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. When did you stop preparing Over 20</p> <p>21 Reports?</p> <p>22 A. 2014, 2015, I believe.</p> <p>23 Q. So is it fair to say that you spent</p> <p>24 approximately four to five years preparing those</p> <p>25 reports?</p>

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1 A. Yeah, 2011 to 2014, somewhere in that time  
2 frame.

3 Q. And if had you to estimate how many reports  
4 in total you prepared during that four- to five-year  
5 time frame, what would you -- what would you put  
6 that number at?

7 A. Personally that I did? I -- I mean, I  
8 really -- I really wouldn't know, like, an amount  
9 that I would have done. I went in and did it on the  
10 days, like I said, that Jimmy wasn't there, but I  
11 don't know how many those were.

12 Q. If I wanted to know whether -- you noted in  
13 your cover e-mail that the DC did not cut any  
14 orders.

15 Do you see that?

16 A. Yes, sir.

17 Q. If I wanted to know if, in fact, any of the  
18 orders had been cut by someone else, how would I do  
19 that?

20 A. Well, we would have been the ones to cut  
21 them at the DC.

22 Q. Okay. So if the DC didn't cut them, no one  
23 else was cutting them, right?

24 A. For the time period that we were doing the  
25 Over 20 Report?

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1 Q. Right.

2 A. We would be the ones cutting them at the DC.

3 Q. And someone --

4 A. If we were instructed to do that.

5 Q. Right.

6 And how would -- how would -- how would of  
7 those -- those instructions come to you, via e-mail  
8 or telephone?

9 A. E-mail.

10 Q. Do you recall an instance -- any instance  
11 where you got an e-mail to cut an order?

12 A. I don't remember any given instance to --  
13 that we did that.

14 Q. Do you remember that ever happening in this  
15 four- to five-year time frame?

16 A. In this time frame for the Over 20 Report, I  
17 don't remember -- I don't remember me getting any  
18 kind of a phone call or an e-mail to cut an order.

19 Q. So you guys were running these reports daily  
20 for four to five years, and you never recall  
21 receiving any direction to cut an order; is that  
22 correct?

23 A. I don't remember -- I don't remember getting  
24 one.

25 (Abernathy Exhibit 11 was marked for

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1 identification.)

2 BY MR. BOWER:

3 Q. You've been handed what's been marked  
4 Exhibit 11, sir, and this is another Over 20 Report,  
5 dated 8/14/14.

6 Do you see that?

7 A. Yes, sir.

8 Q. I just wanted to, for the record, include a  
9 report that did have the four-week average.

10 Do you see that on there, sir?

11 A. Yes, sir.

12 Q. So in some circumstances you did look at the  
13 four-week average, correct?

14 A. Some instances we added the four-week  
15 average, yes, sir.

16 Q. And why would you sometimes include the  
17 four-week average and other times not include it?

18 A. I believe we -- all this information you see  
19 here was requested by us to include.

20 Q. Well, we just looked at a report that didn't  
21 have the four-week average --

22 A. Yes, sir.

23 Q. -- correct?

24 So were you supposed to include it or not?

25 A. I don't know why I wouldn't have included

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1 it, but the information we provided to them, this is  
2 what they asked for, so this is what we provided  
3 them.

4 Q. When you say "this is what they asked for,"  
5 what do you -- what do you mean?

6 A. The Global Investigation Team, this was  
7 information that they asked us to send them.

8 Q. In other words, they asked you to include  
9 the four-week average?

10 A. I mean, since it's on here, I would say they  
11 asked us to add that on there. That's why it was on  
12 there.

13 Q. And I note that on here, it has: Ordered  
14 and sent.

15 Right?

16 A. Yes, sir.

17 Q. So does that mean at the time this report  
18 was prepared, those orders were already sent out?

19 A. Yes, sir.

20 Q. Okay. So what is the point of providing  
21 this order to these folks in the "to" column? What  
22 was the reason?

23 A. Providing the ordered quantity. Is that  
24 what you're asking?

25 Q. Yeah. I mean, we talked about that you

<p style="text-align: right;">Page 126</p> <p>1 would provide these Over 20 Reports, I thought,</p> <p>2 earlier so that they could be reviewed and any cuts</p> <p>3 could be made, correct?</p> <p>4 A. Correct.</p> <p>5 Q. But it appears here that these orders have</p> <p>6 already been sent, correct?</p> <p>7 A. Yes.</p> <p>8 Q. So who decided to send the Over 20s in this</p> <p>9 example?</p> <p>10 MR. MAZZA: Objection to form.</p> <p>11 BY MR. BOWER:</p> <p>12 Q. I'll strike that.</p> <p>13 Who made the decision to approve the orders</p> <p>14 of Over 20 for shipment as reflected on the</p> <p>15 attachment to Exhibit 11?</p> <p>16 A. So -- so the direction given to me was to</p> <p>17 send orders anything -- oxy-30 over 20, cut it to</p> <p>18 20; anything -- any other drug over 50, report that,</p> <p>19 send the order unless it was over 20, cut oxy-30,</p> <p>20 20 -- cut it to 20; and then if we heard back from</p> <p>21 anybody on this group to do something else with</p> <p>22 another order, then we would process that and fix</p> <p>23 that order to what they wanted it to be.</p> <p>24 Q. So let me see if I can clear that up a</p> <p>25 little bit, because let's look at Store Number 308</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yes, sir.</p> <p>2 Q. So they had approximately two hours to</p> <p>3 review these orders, decide whether they should be</p> <p>4 cut or --</p> <p>5 A. Yes, sir.</p> <p>6 Q. -- or any other changes should be made</p> <p>7 before they were shipped?</p> <p>8 A. I mean, that's when we sent it to them, yes,</p> <p>9 sir.</p> <p>10 Q. And you see, looking again at that</p> <p>11 Manchester, Tennessee, order, that four-week total</p> <p>12 is zero, right?</p> <p>13 A. Yes.</p> <p>14 Q. The four-week average is zero, right? And</p> <p>15 they ordered 55 bottles, right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. 100 pills per bottle?</p> <p>18 A. I'm not sure.</p> <p>19 Q. Do you know how many pills were in a bottle?</p> <p>20 A. Not off the top of my head.</p> <p>21 Q. Do you know what the potential ranges were?</p> <p>22 A. As far as C2s go?</p> <p>23 Q. As far as this product here.</p> <p>24 A. No, sir, not off the top of my head, I don't</p> <p>25 know.</p>
<p style="text-align: right;">Page 127</p> <p>1 here, okay? Do you see it on there? Manchester,</p> <p>2 Tennessee?</p> <p>3 A. Yes, sir.</p> <p>4 Q. It says ordered 55, right?</p> <p>5 A. Yes.</p> <p>6 Q. Same 55?</p> <p>7 A. Yes.</p> <p>8 Q. So at this point that order has already been</p> <p>9 sent, right?</p> <p>10 A. Well, at the time of the e-mail it was still</p> <p>11 sitting in our building.</p> <p>12 Q. Okay. So you're telling me that the reason</p> <p>13 for this e-mail is to let -- alert Gregory Beam,</p> <p>14 George Chapman, Donna Auldrige, Kristy Spruell and</p> <p>15 Mike Mullin and give them an opportunity to cut that</p> <p>16 order before it actually goes out the door?</p> <p>17 A. If we heard them -- if that's what they</p> <p>18 wanted to do with it, yes, sir. It was -- we sent</p> <p>19 this over to them for review, and if we did not hear</p> <p>20 anything back, we sent the order.</p> <p>21 Q. What time would those orders be sent? What</p> <p>22 time of day?</p> <p>23 A. They didn't leave the building until after</p> <p>24 3:00 p.m.</p> <p>25 Q. So this was at 1:14, correct?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Okay. You believe this order was shipped or</p> <p>2 do you think that it was shipped?</p> <p>3 A. I believe it was shipped.</p> <p>4 (Abernathy Exhibit 12 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. BOWER:</p> <p>7 MR. MAZZA: These are getting thicker.</p> <p>8 MR. BOWER: I'm trying to avoid the thick</p> <p>9 ones. We're unfortunately going to have a few.</p> <p>10 BY MR. BOWER:</p> <p>11 Q. You've been handed what's been marked as</p> <p>12 Exhibit 12, which is an e-mail and an attachment.</p> <p>13 The Bates number of the cover e-mail is 17510, and</p> <p>14 the last page of the document -- of the exhibit is</p> <p>15 19184, although --</p> <p>16 MR. MAZZA: Zach --</p> <p>17 MR. BOWER: Yes, that's going to be my first</p> <p>18 question, whether this is, in fact, 21402 and</p> <p>19 when it was implemented.</p> <p>20 MR. MAZZA: Well, the question I was going</p> <p>21 to ask you is the Bates are not consecutive, so I</p> <p>22 just wanted to confirm that we're dealing with an</p> <p>23 attachment to the e-mail.</p> <p>24 MR. BOWER: Well, there may be -- right.</p> <p>25 Okay. So if you -- this is -- it includes the</p>



<p style="text-align: right;">Page 130</p> <p>1 form as well. So if you look at the attachment,  2 the attachment ends -- it is consecutive, because  3 the attachment starts with 17511, if you look at  4 the first page after the e-mail.  5 MR. MAZZA: Oh, okay. I'm with you.  6 MR. BOWER: And that ends in 17514.  7 MR. MAZZA: Right.  8 MR. BOWER: And then the document attached  9 to that, which I believe is referenced in this  10 attachment, is just a blank Controlled Substance  11 Distribution Monitoring Program form.  12 MR. MAZZA: Okay. So --  13 MR. BOWER: Which I'm going to ask about in  14 context of the attachment.  15 MR. MAZZA: So the second set of Bates was  16 not attached to the e-mail.  17 MR. BOWER: Correct. So I did a composite  18 exhibit for ease of numbering.  19 MR. MAZZA: You want to keep them together?  20 MR. BOWER: Yes.  21 MR. MAZZA: Okay. You can go ahead and  22 start your review.  23 MR. BOWER: I apologize for the confusion. I  24 should have made that clarified.  25 MR. MAZZA: No, no, no. It happens.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. So I just have a few questions about this,  2 and particularly in light of Exhibit 11, which is  3 the Over 20 Report, which is dated after this, which  4 is the one we just looked at right there.  5 If you will note, that's dated after this  6 e-mail.  7 A. Yes, sir.  8 Q. Okay. So I just -- my first question is:  9 Was this policy that's reflected in Exhibit 12 in  10 place in July of 2014?  11 A. I don't -- I don't think so.  12 Q. Do you know whether this policy was ever  13 implemented at Walmart, 6045?  14 A. I mean, it -- I don't remember seeing this  15 or anything like this. I mean --  16 MR. BOWER: Why don't we just pause and go  17 off the record for a minute and see if we can --  18 MR. MAZZA: There are folks on the line,  19 right?  20 THE VIDEOGRAPHER: We're going off the  21 record. The time is 1:38.  22 (Recess from 1:38 p.m. until 1:43 p.m.)  23 THE VIDEOGRAPHER: Going back on record.  24 Beginning of Media File Number 4. The time is  25 1:43.</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. BOWER: Just for the record, I'll note  2 that the first page of the attachment has a link  3 to the forms, and the first form referenced there  4 is an Order of Interest Evaluation Form. And  5 that's why I attached this one, to see if that's  6 the form that's linked there, if the witness  7 knows the answer to that question.  8 MR. MAZZA: Yeah. And if we're clarifying,  9 the document ending in 182 is titled Order of  10 Interest Investigation Form, not evaluation form.  11 MR. BOWER: That's correct.  12 MR. MAZZA: All right.  13 BY MR. BOWER:  14 Q. Sir, the cover of the e-mail which you are  15 currently reviewing is from Theresa Alford to a host  16 of folks, including yourself.  17 Do you see that?  18 A. Yes, sir.  19 Q. So just take your time. I didn't mean to  20 interrupt you. Take your time and review the  21 attachment and just let me know when you've had a  22 chance to do that.  23 Have you had a chance to review the  24 document?  25 A. Yes, sir. I'm ready.</p>	<p style="text-align: right;">Page 133</p> <p>1 BY MR. BOWER:  2 Q. Mr. Abernathy, right before we went off, I  3 had asked a question about the relationship of  4 Exhibits 12 and 11 and whether the policy reflected  5 in Exhibit 12 was in place at the time the Over 20  6 Report reflected in 11 was created and distributed  7 by yourself.  8 A. I don't remember when this policy was put in  9 place.  10 Q. Do you recall whether it was ever put in  11 place and applicable to DC 6045?  12 MR. MAZZA: Objection; form.  13 BY MR. BOWER:  14 Q. I'll strike that, then.  15 Do you recall whether it was ever put in  16 place?  17 A. I believe it was put in place, but I don't  18 know at what point.  19 Q. Do you know whether it applied to the C2  20 opioids that were distributed by 6045?  21 A. I think it would, yes.  22 Q. Do you know when that application would have  23 taken place or started?  24 A. I believe when we started automated  25 Reddwerks system.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. That would have been sometime after August</p> <p>2 2014, correct?</p> <p>3 A. 2014, somewhere in that period, yes, sir.</p> <p>4 Q. So if you look at Exhibit 11, it's dated</p> <p>5 August 14, 2014, right? At that point you were</p> <p>6 still creating the daily Over 20 Reports, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. So if it -- is it true then that the policy</p> <p>9 reflected in Exhibit 12 wasn't yet in place by</p> <p>10 August of 2014?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. In connection with the policy</p> <p>13 reflected in Exhibit 12, which is titled "Pharmacy</p> <p>14 Manual Evaluating Orders of Interest and Suspicious</p> <p>15 Order Reporting."</p> <p>16 Do you see that?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did you have any duties or responsibilities</p> <p>19 in connection with carrying out that policy?</p> <p>20 A. My -- all our job was at the DC is once</p> <p>21 those orders were flagged in the Reddwerks system</p> <p>22 was for us to electronically send those over to the</p> <p>23 home office team for whatever they did, evaluate</p> <p>24 those orders.</p> <p>25 Q. So based on your experiences and</p>	<p style="text-align: right;">Page 136</p> <p>1 interest will be thoroughly evaluated by the</p> <p>2 Logistics Compliance Team.</p> <p>3 Do you see that?</p> <p>4 MR. MAZZA: Where are you at, Mr. Bower?</p> <p>5 MR. BOWER: Top of page 17152. Sorry.</p> <p>6 BY MR. BOWER:</p> <p>7 Q. Do you see that, sir?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And it says: No order identified as an</p> <p>10 order of interest will be shipped.</p> <p>11 Do you see that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. So why is it that a month later we are</p> <p>14 shipping all these orders on the Over 20 Report?</p> <p>15 MR. MAZZA: Objection; form.</p> <p>16 A. Well, I don't -- I don't know who the</p> <p>17 Logistics Compliance Team is, so -- I know that</p> <p>18 these are the people I was sending the report to. I</p> <p>19 don't know what they were doing with them.</p> <p>20 The process and direction that I had was we</p> <p>21 would send them unless they told me what I needed to</p> <p>22 do with those orders.</p> <p>23 Q. Right.</p> <p>24 A. So --</p> <p>25 Q. I didn't mean to cut you off. Please</p>
<p style="text-align: right;">Page 135</p> <p>1 responsibilities at 6045, is it your understanding</p> <p>2 that this policy was applied to the orders that you</p> <p>3 would send over to the home office team?</p> <p>4 A. That's what I understand.</p> <p>5 Q. Okay. And that the orders of interest under</p> <p>6 the definitions here -- do you see it has a</p> <p>7 definition for orders of interest?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Those would be the orders that you would</p> <p>10 have sent over in the Over 20 Reports?</p> <p>11 A. Yes.</p> <p>12 Q. And all of this -- all of these procedures</p> <p>13 and evaluations would have occurred between the time</p> <p>14 that we talked about earlier, 1:14 p.m. and the time</p> <p>15 of shipment, which would have been approximately two</p> <p>16 hours later, correct?</p> <p>17 A. I'm not sure. I mean, I'm not sure what</p> <p>18 they had to do with it once they got it. We sent</p> <p>19 the report at 1:14 in the afternoon.</p> <p>20 Q. Do you see, sir, under the procedures, on</p> <p>21 page 17511, it goes through the procedures to</p> <p>22 evaluate an order of interest?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Do you see that? In the top of the</p> <p>25 following page, it states that every order of</p>	<p style="text-align: right;">Page 137</p> <p>1 finish.</p> <p>2 A. So that's why I was saying I don't know -- I</p> <p>3 don't know who the Logistics Compliance Team is. I</p> <p>4 don't know if that's -- I was sending them to the</p> <p>5 people on this e-mail list. I don't know if they</p> <p>6 were a part of this team, so -- and, again, like I</p> <p>7 said, I don't know exactly when this was</p> <p>8 implemented, so --</p> <p>9 Q. Well, sir, if you keep reading on this, on</p> <p>10 the top of page 512 again: If an order of interest</p> <p>11 is not resolved within four business days.</p> <p>12 Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. But you weren't waiting four business</p> <p>15 days after you sent the Over 20 Report to ship, were</p> <p>16 you?</p> <p>17 A. No, sir.</p> <p>18 Q. You were shipping those the same day, right?</p> <p>19 A. We were shipping them the same day.</p> <p>20 Q. So this policy could not have been being</p> <p>21 followed as of 8/14/2014, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Was there ever a time when you were sending</p> <p>24 Over 20 Reports and waiting four days to ship?</p> <p>25 A. No, sir.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q. Are you familiar with any time period, based</p> <p>2 on your experience at 6045, when an order that</p> <p>3 showed up on an Over 20 Report had to wait four days</p> <p>4 before it was shipped?</p> <p>5 A. For the Over 20 Report, I don't ever</p> <p>6 remember holding an order during the time frame we</p> <p>7 were using that report.</p> <p>8 Q. When did you stop using that report?</p> <p>9 A. Again, it was 2014, 2015, when we went to</p> <p>10 the automated Reddwerks.</p> <p>11 Q. Okay. Do you recall as you sit here today</p> <p>12 what the automated Reddwerks was flagging for a</p> <p>13 potentially suspicious report?</p> <p>14 A. It was looking for -- the criteria it was</p> <p>15 looking for was based on item and quantity.</p> <p>16 Q. Were those items and quantities different</p> <p>17 than those that were identified in the Over 20</p> <p>18 Reports?</p> <p>19 A. In the -- I don't know what they were in the</p> <p>20 red -- automated Reddwerks. I just know they</p> <p>21 were -- they were looking at item and quantity.</p> <p>22 That's -- I mean, that's all I know that -- that's</p> <p>23 what would cause the order to flag.</p> <p>24 Q. Do you know who would know what the item and</p> <p>25 quantity criteria were that were used in Reddwerks?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Have you ever seen this form before?</p> <p>2 A. No, sir.</p> <p>3 Q. So you don't know whether that form is the</p> <p>4 one that is noted as the link on the first page of</p> <p>5 the attachment, which is 75111?</p> <p>6 A. No, sir.</p> <p>7 Q. You've never seen one of these forms filled</p> <p>8 out; is that correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. With that, you can probably move that</p> <p>11 to the side, sir, for a while -- or for now.</p> <p>12 Let's turn to Exhibit 13, which is another</p> <p>13 Over 20/50 report dated October 16th, 2014, and the</p> <p>14 e-mail is ending Bates number 9807. And I want to</p> <p>15 use this report to ask you some questions, mostly</p> <p>16 focused on the addition of hydro as a Controlled 2</p> <p>17 substance.</p> <p>18 So with that in mind, take your time to</p> <p>19 review it if you need to.</p> <p>20 A. Okay.</p> <p>21 Q. Have you had a chance to review it, sir?</p> <p>22 A. Yes, sir.</p> <p>23 Q. I have a few lines of questioning on this,</p> <p>24 so I want to first ask you about your reference to</p> <p>25 hydro.</p>
<p style="text-align: right;">Page 139</p> <p>1 A. I don't know who set those.</p> <p>2 Q. Do you know who would know that?</p> <p>3 A. I mean, I don't.</p> <p>4 Q. Do you know who was involved in working with</p> <p>5 the Reddwerks and setting that up?</p> <p>6 A. I mean, Miranda was part of that team</p> <p>7 working with ISD and Reddwerks to get that process</p> <p>8 going.</p> <p>9 (Abernathy Exhibit 13 was marked for</p> <p>10 identification.)</p> <p>11 MR. MAZZA: Zach, are we done with 12, or</p> <p>12 you think you're going to need it again? I'm</p> <p>13 just going to put it back together if we're done.</p> <p>14 MR. BOWER: Let me ask a few more questions.</p> <p>15 That reminds me of the attachment issue. I want</p> <p>16 to clear that up for the record.</p> <p>17 BY MR. BOWER:</p> <p>18 Q. Let's look at Exhibit 12 for another moment.</p> <p>19 Let me turn back to it.</p> <p>20 The second attachment which begins with</p> <p>21 Bates number 19182 is titled "A Controlled Substance</p> <p>22 Distribution Monitoring Program," and then under</p> <p>23 that it has "Orders of Interest Investigation Form."</p> <p>24 Do you see that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 141</p> <p>1 Do you see that, sir?</p> <p>2 A. Yes, sir.</p> <p>3 Q. What drug does that refer to?</p> <p>4 A. Hydrocodone.</p> <p>5 Q. And by this date do you know whether</p> <p>6 hydrocodone had been classified as a Schedule II</p> <p>7 drug?</p> <p>8 A. Yes, sir, it looks like it had been.</p> <p>9 Q. And that's why you were including it in your</p> <p>10 reports, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Do you know who was responsible for</p> <p>13 reviewing orders of hydro before you?</p> <p>14 A. No, sir.</p> <p>15 Q. Do you know whether anybody was doing that?</p> <p>16 A. I don't know.</p> <p>17 Q. Did you ever ask anybody?</p> <p>18 A. No, sir.</p> <p>19 Q. When did you first learn that hydro would be</p> <p>20 reclassified as a Schedule II narcotic?</p> <p>21 A. Seems like I heard about it right before it</p> <p>22 happened. I think it happened in October. I think</p> <p>23 we found out about it sometime in September because</p> <p>24 we had a very short time to prepare for that.</p> <p>25 Q. And did you have concerns that it would</p>

<p style="text-align: right;">Page 142</p> <p>1 impact your day-to-day reporting?</p> <p>2 A. I did have some concerns about that.</p> <p>3 Q. And did it, in fact, have an impact in your</p> <p>4 reporting obligations?</p> <p>5 A. I don't think it had an impact. I think it</p> <p>6 was just cautious because of the volume that we were</p> <p>7 taking on, so --</p> <p>8 Q. And did you receive any additional guidance</p> <p>9 or policy or procedure to deal with the orders for</p> <p>10 hydrocodone?</p> <p>11 A. Oh, I'm sure I did.</p> <p>12 Q. Were those written policies and procedures?</p> <p>13 A. Well, I mean, yes. I don't recall any off</p> <p>14 the top of my head, but, I mean, we -- with the</p> <p>15 change, there were some new rules that came with it.</p> <p>16 Q. And do you know what those rules were?</p> <p>17 A. You know, just the same policies and</p> <p>18 procedures we had, just it's with hydro and, you</p> <p>19 know, make sure you're following those rules with it</p> <p>20 and that type of thing.</p> <p>21 Q. So hydro was to be included on the Over 50</p> <p>22 Report, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And any order under 50 would be shipped,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. What did you do to research orders over 50</p> <p>2 bottles?</p> <p>3 A. So I would have to go back and go back</p> <p>4 into -- to get the week-by-week of what we sent</p> <p>5 them, in that tab I was talking about, the</p> <p>6 historical data, I would have to go back and</p> <p>7 research and dig through that to get the four-week</p> <p>8 totals.</p> <p>9 Q. Anything else you did to research?</p> <p>10 A. I mean, we were, you know, like I said, we</p> <p>11 were always looking for quantity and, you know,</p> <p>12 pattern, frequency, those types of things, just</p> <p>13 anything that looked unusual, we were still doing</p> <p>14 that.</p> <p>15 Q. You were always looking for pattern,</p> <p>16 frequency and anything unusual?</p> <p>17 A. I mean those were things that we were</p> <p>18 looking at.</p> <p>19 Q. Okay. How were you looking for patterns,</p> <p>20 what were you looking at?</p> <p>21 A. If we noticed a store that maybe showed up,</p> <p>22 you know, quite a bit, like we would notice it being</p> <p>23 on there quite a bit or something like that. Those</p> <p>24 would be some of the examples.</p> <p>25 Q. And what would happen if you noticed a store</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Yes.</p> <p>2 Q. Any order over 50 would be reviewed prior to</p> <p>3 shipment, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And who would be doing the reviews for</p> <p>6 those?</p> <p>7 A. I know that we reviewed them, Jimmy and I</p> <p>8 would review them, and so we were -- we got to the</p> <p>9 point where if it was over 50, we were told to cut</p> <p>10 that because they were -- the way they stored them</p> <p>11 at the store, it would have been too much.</p> <p>12 So, you know, we were told same thing with</p> <p>13 oxycodone 30, same way with over 50. It's just</p> <p>14 getting to where they didn't have the storage at the</p> <p>15 store to do that.</p> <p>16 Q. Well, if they didn't have the storage at the</p> <p>17 store to do it, why would they be ordering it?</p> <p>18 Didn't that raise concerns for you?</p> <p>19 A. I don't think that the pharmacists were</p> <p>20 ordering it. I think that the system was ordering</p> <p>21 it.</p> <p>22 Q. Well, let me ask you, then: You say you'll</p> <p>23 -- I will research all orders over 50 bottles.</p> <p>24 Those were your words, correct, sir?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 145</p> <p>1 being on there quite a bit, what would you do?</p> <p>2 A. I would usually let someone know, say hey,</p> <p>3 I've seen this store pop up a few times. Or</p> <p>4 something like that.</p> <p>5 Q. And how would you -- would you do that just</p> <p>6 based on memory?</p> <p>7 A. Most of the time.</p> <p>8 Q. So you would review -- how many orders did</p> <p>9 you review a day?</p> <p>10 A. I mean it varied from day-to-day.</p> <p>11 Q. Sometimes hundreds of orders, right?</p> <p>12 A. It could be.</p> <p>13 Q. This was over a period of many years, right?</p> <p>14 A. Well, once Hydro became a C2, it became</p> <p>15 more.</p> <p>16 Q. And you were doing this pattern review based</p> <p>17 on memory?</p> <p>18 A. If something struck me, like if I remembered</p> <p>19 a store, yes.</p> <p>20 Q. How often did something strike you as --</p> <p>21 with respect to a pattern problem?</p> <p>22 A. Pattern, not so much, not very often, but --</p> <p>23 Q. What about the other issues you researched?</p> <p>24 You mentioned pattern. Anything else?</p> <p>25 A. Well, like I said, size. If something --</p>

<p style="text-align: right;">Page 146</p> <p>1 like again, if one of the ladies told us, hey, this</p> <p>2 looks like this is a large amount, or, you know,</p> <p>3 that type of thing we would call the store.</p> <p>4 Q. But you were running reports on the side</p> <p>5 weren't you?</p> <p>6 A. We were.</p> <p>7 Q. So in addition to that you were doing your</p> <p>8 own size review?</p> <p>9 A. No, like in -- like when the ladies were</p> <p>10 picking and stuff like that. You know, if a certain</p> <p>11 item seemed to be picking more than normal, but it</p> <p>12 wouldn't have triggered on the report, they may come</p> <p>13 to us and tell us that.</p> <p>14 Q. Can you give me, as you sit here today, one</p> <p>15 example when someone came and alerted you that there</p> <p>16 was -- they noticed an issue when picking an item,</p> <p>17 just one?</p> <p>18 A. I mean, I remember we had an issue with</p> <p>19 liquid hydrocodone that was -- it seemed like every</p> <p>20 store was getting the same amount and they came and</p> <p>21 contacted us and we turned it over to the home</p> <p>22 office team and said hey, look, it looks like we</p> <p>23 have some stores that are just unusual that we would</p> <p>24 be pulling that amount out of there, so --</p> <p>25 Q. So those looked unusual to you?</p>	<p style="text-align: right;">Page 148</p> <p>1 you know, who I needed to contact.</p> <p>2 Q. Okay. So who are those people?</p> <p>3 A. Anybody on our home office team, if it</p> <p>4 seemed to be a replenishment issue, I might reach</p> <p>5 out to our replenishment team, so those are</p> <p>6 generally the two that --</p> <p>7 Q. Can you provide us any names today, sir?</p> <p>8 A. Ramona Sullins would be the one on our home</p> <p>9 office team, Linda Wilson on our replenishment team.</p> <p>10 Q. Anyone else?</p> <p>11 A. No, sir.</p> <p>12 Q. So as you sit here today, wouldn't you have</p> <p>13 reported this issue you found with the hydro liquid</p> <p>14 to Ramona?</p> <p>15 A. I would have reported it to someone over</p> <p>16 there. I don't remember who I spoke to.</p> <p>17 Q. Who else could you have reported it to other</p> <p>18 than Ramona?</p> <p>19 A. Anybody on our home office team.</p> <p>20 Q. Do you know who that was?</p> <p>21 A. At the time, I mean, I don't know -- Nick</p> <p>22 Tallman.</p> <p>23 Q. Anyone else?</p> <p>24 A. Those would have been the two I would have</p> <p>25 contacted.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Yes, well to --</p> <p>2 Q. Did you cut those orders or did you ship</p> <p>3 them?</p> <p>4 A. I don't remember what we did with those</p> <p>5 orders. I just remember the incident that it</p> <p>6 happened and we reported that.</p> <p>7 Q. Well if you found -- if you determined them</p> <p>8 to be unusual, why wouldn't you cut them?</p> <p>9 A. I didn't make the decision to cut it.</p> <p>10 That's why I sent that information over to our home</p> <p>11 office team and --</p> <p>12 Q. Who specifically did you send it to?</p> <p>13 A. I don't remember who I would have sent it</p> <p>14 to.</p> <p>15 Q. Who was in the home office team that you</p> <p>16 would -- you could have sent it to?</p> <p>17 MR. MAZZA: Objection as to form.</p> <p>18 A. For that particular day and item, I don't</p> <p>19 know who I would have contacted that day. I don't</p> <p>20 remember who I contacted.</p> <p>21 Q. What about over the course of the four</p> <p>22 years, who were the people at the home office team</p> <p>23 that you contacted when you found something that was</p> <p>24 suspicious?</p> <p>25 A. Again, it would depend on the situation and,</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. And how would you have contacted them, via</p> <p>2 e-mail or by phone?</p> <p>3 A. I probably would have contacted by phone in</p> <p>4 that situation.</p> <p>5 Q. And then would you have held the order and</p> <p>6 not shipped it until you heard back from them?</p> <p>7 A. I'm not sure what I did, but that's why I</p> <p>8 would have called, so that we could have got</p> <p>9 resolution to it as quickly as possible.</p> <p>10 Q. Well, did Walmart have a policy in place as</p> <p>11 to what you should do when you reported a suspicious</p> <p>12 order, whether you should hold it and not ship it,</p> <p>13 or whether you should ship it?</p> <p>14 MR. MAZZA: Objection as to form.</p> <p>15 Q. I'll strike that then.</p> <p>16 Do you know whether Walmart had a policy in</p> <p>17 place as to whether to ship an order that you found</p> <p>18 to be suspicious?</p> <p>19 MR. MAZZA: Same objection.</p> <p>20 A. I didn't know of a policy not to ship it.</p> <p>21 Q. Other than this one example of the -- is it</p> <p>22 hydromorphone liquid, is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. Any other examples over the course of the</p> <p>25 four to five years where you specifically can recall</p>



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1 someone alerting you as to a suspicious order?  
 2 A. Not specifically.  
 3 Q. Just this one time?  
 4 MR. MAZZA: Objection as to the form.  
 5 Q. Correct?  
 6 A. For that item that time.  
 7 Q. I'm asking for any other -- any other  
 8 controlled 2 substance over the entire four or five  
 9 year time period. Are there any other examples you  
 10 can give us where you specifically contacted home  
 11 office team that you considered an order to be  
 12 suspicious?  
 13 A. Not specifically.  
 14 Q. Going back to Exhibit 13, kind of towards  
 15 the end of your second paragraph there, you state:  
 16 It takes about one minute without any interruptions  
 17 to complete one line in the report.  
 18 Do you see that?  
 19 A. Yes, sir.  
 20 Q. What does that mean to complete one line  
 21 item?  
 22 A. It would be one of the line items on this  
 23 report.  
 24 Q. What were you doing to complete them?  
 25 A. Well, we were having to go back through the

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1 historical data, find that store and that item, and  
 2 look at the orders to find out how many were  
 3 ordered.  
 4 Q. So can you give us an example, sir? Let's  
 5 look at -- let's just look at the first one there,  
 6 all right, store 35 -- 3757, Arlington, Washington,  
 7 do you see that, sir?  
 8 A. Yes.  
 9 Q. For methadone, do you see that? They  
 10 ordered 28. What would you have reviewed?  
 11 A. I mean, I would have gone back and tried to  
 12 get the four week total and four week average.  
 13 Q. Those are absent here, correct?  
 14 A. Right. And it was probably because I was  
 15 busy and I was trying to do that, so --  
 16 Q. Well, you do include the four week average  
 17 and four week total for all the orders that were  
 18 cut, correct?  
 19 A. Yes.  
 20 Q. Did someone specifically tell you to do that  
 21 to only orders that were cut?  
 22 A. I don't recall. I don't know. I don't  
 23 remember that.  
 24 Q. Do you have any idea why the four week total  
 25 and four week average are only included for the

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1 orders that were cut?  
 2 A. I believe because that's what I had time to  
 3 do.  
 4 Q. Did you ask anybody for help?  
 5 A. I don't remember if I would have or didn't.  
 6 Q. Could you have?  
 7 A. I mean, I guess I could have.  
 8 Q. Any reason you didn't?  
 9 A. I don't remember the day or the  
 10 circumstances, so --  
 11 Q. On this report you cut all the orders that  
 12 were over 50, correct?  
 13 A. Yes, sir.  
 14 Q. Did you report those orders to the DEA?  
 15 A. I did not.  
 16 Q. You reduced the order amount and you shipped  
 17 them, correct?  
 18 A. Yes, sir.  
 19 Q. Do you know whether anyone at Walmart  
 20 reported those orders?  
 21 A. I do not.  
 22 Q. Do you know whether Walmart should have  
 23 reported those orders?  
 24 MR. MAZZA: Objection as to form.  
 25 A. I do not.

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1 Q. Do you know whether Wal-Mart had a legal  
 2 obligation to report those orders?  
 3 MR. MAZZA: Same objection.  
 4 Q. I'm just asking whether you know.  
 5 A. I don't know.  
 6 Q. Has anyone since the time you began working  
 7 at Walmart ever informed you as to what Walmart's  
 8 legal obligations were with respect to control 2  
 9 substances?  
 10 A. I don't -- I'm not -- I mean, I'm not a  
 11 lawyer, so I don't know the legal reasoning for --  
 12 behind that. When I was hired on to do the pharmacy  
 13 order monitoring at the home office, I mean, it was  
 14 explained to me that those orders would be reported  
 15 at that time. Before that, I didn't know that.  
 16 Q. Who explained that to you?  
 17 A. Dena, she was my trainer, she was also on  
 18 the team.  
 19 Q. Did she provide you any written policies and  
 20 procedures regarding what the legal obligations  
 21 were?  
 22 A. I don't remember -- I don't remember that.  
 23 Q. You don't remember ever receiving any  
 24 written policies and procedures; is that correct?  
 25 A. Correct.

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1 Q. After your e-mail on this hydro, did you  
 2 have any follow-up conversations with anyone as to  
 3 how to deal with hydro going forward?  
 4 A. I don't remember.  
 5 Q. You don't remember having any follow-up  
 6 conversations; is that correct?  
 7 A. Yes, sir.  
 8 Q. Do you recall how you actually treated the  
 9 hydro orders after 10/6/2014?  
 10 MR. MAZZA: Object to form.  
 11 Q. Strike that.  
 12 After 10/6/2014, did the hydro orders  
 13 continue to appear on your Over 20 reports?  
 14 A. After -- yes. When they moved to a C2, they  
 15 were on the Over 20 report.  
 16 Q. Do you know whether when you were reviewing  
 17 the hydro orders, did you have access to the order  
 18 histories from before they were C2s?  
 19 A. I don't -- I mean, I don't think so, because  
 20 the information we used was in the Reddwerks system  
 21 that we had for our building, so --  
 22 Q. Well, wouldn't that have been relevant, for  
 23 your research -- the prior orders for that store,  
 24 for hydro?  
 25 A. I'm sorry. Say that again.

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1 Q. Wouldn't a store's historical order pattern  
 2 been relevant and when you state here, you will  
 3 research orders over a certain threshold, wouldn't  
 4 you want to know that?  
 5 A. I think we were just gathering that data. I  
 6 don't know that I was using that data to make  
 7 decisions on anything.  
 8 Q. What data were you using to make decisions  
 9 then?  
 10 A. I was -- I was -- the direction and the  
 11 policies and procedures given to me is what I was  
 12 using.  
 13 Q. Well, but, sir, you state here "I will  
 14 research," do you see that: I will continue to  
 15 research," do you see that?  
 16 A. Yes.  
 17 Q. What were you researching?  
 18 A. I was researching to find those stores,  
 19 those items and their orders.  
 20 Q. But that information is on the report,  
 21 correct?  
 22 A. Yes.  
 23 Q. Anything that's not on the report that you  
 24 were researching?  
 25 A. No. That's what I was researching. I was

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1 having to go back and research that.  
 2 Q. By research, you mean review the report?  
 3 A. Gather the data for the report, yes, sir.  
 4 Q. But this report, for example, doesn't have  
 5 the data, correct?  
 6 MR. MAZZA: Objection as to form.  
 7 Q. It has the data for four of the items  
 8 listed, right?  
 9 A. Yes, sir.  
 10 Q. It doesn't have the data for all the other  
 11 items listed, right?  
 12 A. Yes, sir.  
 13 Q. Which is a lot more than four, right?  
 14 MR. MAZZA: Same objection.  
 15 Q. Did you research those?  
 16 A. I don't know if I did or didn't.  
 17 Q. Well, there is no data here, so what other  
 18 sources of information did you have to research?  
 19 A. I guess I don't understand the question.  
 20 Q. Well, sir, let's use another example. Let's  
 21 look at -- let's go to the one, do you see the three  
 22 cuts in the row there of over 50 that are shaded?  
 23 A. Yes, sir.  
 24 Q. Let's go to the one right below that, Store  
 25 Number 5136 in Marysville, California, do you see

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1 that?  
 2 A. Yes, sir.  
 3 Q. They ordered 48, right? That's 48 bottles,  
 4 right?  
 5 A. Yes, sir.  
 6 Q. They shipped 48 bottles, right?  
 7 A. Yes.  
 8 Q. You approved those for shipment, correct?  
 9 A. According to this, I did, yes.  
 10 Q. You researched those before you approved  
 11 that, right?  
 12 A. I don't know what research I would have done  
 13 on that.  
 14 Q. Well that's what I'm asking you, sir. You  
 15 say you will continue to research, right? I  
 16 research.  
 17 A. Yes.  
 18 Q. Do you only research when it's over 50?  
 19 A. For this particular day, I did research the  
 20 ones that I -- that were over 50.  
 21 Q. But for over 50, weren't you instructed to  
 22 automatically cut?  
 23 A. Yes.  
 24 Q. So why were you researching them?  
 25 A. To provide that data.

<p style="text-align: right;">Page 158</p> <p>1 Q. So in other words, the research didn't</p> <p>2 impact whether they were cut or not, is that</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. Was anyone at Walmart researching whether an</p> <p>6 order should be cut or not?</p> <p>7 A. The global investigation team, the</p> <p>8 compliance team, the AP team, and the home office</p> <p>9 team was -- that was who was making those decisions.</p> <p>10 Q. And they were making those decisions after</p> <p>11 they received the report and before these orders</p> <p>12 were shipped, correct?</p> <p>13 A. Correct.</p> <p>14 Q. On that day, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And in that window of time, correct?</p> <p>17 A. Correct.</p> <p>18 MR. MAZZA: Zach, we've been going for over</p> <p>19 an hour 45. So if you want to -- whenever you</p> <p>20 are done with --</p> <p>21 MR. BOWER: Sure. That's fine. We can take</p> <p>22 a break now. I think I'm done.</p> <p>23 THE VIDEOGRAPHER: Going off the record.</p> <p>24 The time is 2:20.</p> <p>25 (Recess from 2:20 p.m. until 2:41 p.m.)</p>	<p style="text-align: right;">Page 160</p> <p>1 hard time reading that, Jeff, just holler.</p> <p>2 MR. BOWER: I think it is probably because</p> <p>3 whoever created this, created the PDF from a</p> <p>4 PowerPoint maybe or something and now it's been</p> <p>5 created into a PDF and copied, so --</p> <p>6 MR. MAZZA: Right.</p> <p>7 Q. And sir, while you're reviewing that, I'm</p> <p>8 just trying to get a sense of what the policy was at</p> <p>9 this time period and if this policy was in place at</p> <p>10 6045, because the e-mail reflects that: This is the</p> <p>11 process that we've created to execute our updated</p> <p>12 SOM policy. The plan is to execute the new process</p> <p>13 on Monday, October 27th.</p> <p>14 So --</p> <p>15 A. Okay. Can I ask a question?</p> <p>16 Q. Sure.</p> <p>17 A. It looks like -- is it the same thing twice</p> <p>18 or --</p> <p>19 Q. It looks like -- we can talk about that if</p> <p>20 you want. So if you look at the top of the first</p> <p>21 page of the attachment, it refers to, you know, it</p> <p>22 starts with orders come into DC, that one looks like</p> <p>23 it's Reddwerks and the second page looks like it</p> <p>24 refers to Knapp, K-n-a-p-p, so if that helps.</p> <p>25 A. Oh, yes. Yes.</p>
<p style="text-align: right;">Page 159</p> <p>1 THE VIDEOGRAPHER: We're going back on the</p> <p>2 record the beginning of Media File Number 5. The</p> <p>3 time is 2:41.</p> <p>4 (Abernathy Exhibit 14 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. BOWER:</p> <p>7 Q. Mr. Abernathy, I'm going to hand you what's</p> <p>8 been marked as Exhibit 14 to today's deposition.</p> <p>9 This is an e-mail from Ms. Spruell to yourself and a</p> <p>10 course of others dated 10/24/2014. The Bates number</p> <p>11 ends in 11656 and it includes the attachment. Take</p> <p>12 your time to review it. I can let you know that my</p> <p>13 questions will be focused on whether, kind of, the</p> <p>14 process that's reflected in the attachment was being</p> <p>15 implemented at DC6045 during this time period.</p> <p>16 MR. MAZZA: Zach, I assume your copy has</p> <p>17 like -- the check pattern.</p> <p>18 MR. BOWER: In the box, yeah.</p> <p>19 MR. MAZZA: Yeah, yeah. You can -- I</p> <p>20 mean -- it's just that one on the right-hand side</p> <p>21 is a little hard but that's fine.</p> <p>22 MR. BOWER: I can read them into the record.</p> <p>23 Mine might be a better copy if you have problems.</p> <p>24 If I ask questions on that, I will read them --</p> <p>25 MR. MAZZA: Perfect. Yeah, if you have a</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Okay.</p> <p>2 A. Okay.</p> <p>3 Q. So my first question is whether DC6045</p> <p>4 started executing this new process on Monday,</p> <p>5 October 27th?</p> <p>6 A. I don't know an exact date we started it. I</p> <p>7 mean, I don't know.</p> <p>8 Q. Okay. So you don't recall the exact date</p> <p>9 but you do recall starting the implementation of</p> <p>10 this new process; is that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And let's look at then the first page</p> <p>13 of the attachment, where it refers to -- do you see</p> <p>14 there is a couple references there to the DC</p> <p>15 associate, if you look kind of at the second box</p> <p>16 down from the top and the bottom in parenthesis, it</p> <p>17 says: according to DC associate?</p> <p>18 A. Yes.</p> <p>19 Q. You see it says that. And three of those</p> <p>20 boxes there. Would that have been you at this time</p> <p>21 period, sir?</p> <p>22 A. I -- it would have referred probably to the</p> <p>23 operations managers, because I didn't do it every</p> <p>24 day. One of the -- whichever, like I said,</p> <p>25 whichever OPs manager was in first, this was part of</p>

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1 that process, so --  
2 Q. Did you carry out this process on some  
3 occasions?  
4 A. Yes.  
5 Q. Okay. So let's, if we could for a minute,  
6 walk through what the process was. Okay?  
7 A. Okay.  
8 Q. Can you describe just in general terms how  
9 this process changed what you were doing up to this  
10 point?  
11 A. Yeah. So as the orders came in, rather than  
12 us grabbing those orders and sorting them through an  
13 exported excel spreadsheet, this system would flag  
14 those orders in a tab on the UI, the user interface,  
15 and it would give us options on those items to --  
16 I'm trying to remember exactly what they were, but  
17 it would give us options as to what we wanted to do  
18 with that order, one of those being send to the home  
19 office.  
20 Q. Well, sir, where do you see -- let's walk  
21 through the process for that, okay? The first step  
22 was orders come into DC Reddwerks, correct?  
23 A. Yes, sir.  
24 Q. And then Reddwerks evaluates orders based on  
25 current threshold logic, do you see that?

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1 A. Yes, sir.  
2 Q. And then based on that threshold logic, the  
3 DC associate reviews order alerts to look for  
4 unusual order amounts, do you see that?  
5 A. Yes, sir.  
6 Q. So you mentioned, refers to the home office.  
7 Where in this process do you see that?  
8 I mean, correct me if I'm wrong, sir, this  
9 process calls for the DC associate to do the  
10 cutting, isn't that right.  
11 MR. MAZZA: Objection as to form.  
12 Q. Well, sir, let's look at the options. There  
13 is three options presented there?  
14 A. Yes, sir.  
15 Q. Option number one: Unusual order appears to  
16 be an error according to DC associate.  
17 Correct?  
18 A. Yes, sir.  
19 Q. If that's the determination, the DC  
20 associate cuts the order to the order level  
21 associate believes the level to be accurate, right?  
22 A. Yes, sir.  
23 Q. Okay. When you were carrying out this  
24 policy, how would you determine what an accurate  
25 order level would be?

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1 A. I -- this doesn't look familiar, and the  
2 reason I say that is because it -- I mean, I  
3 don't -- I just -- I guess I don't -- this is not  
4 what I was used to working with when I was in  
5 Reddwerks. Like I said, the orders came in and  
6 flagged and we had the option to cut it but we also  
7 had an option to send that to the home office and we  
8 sent it to the home office for review.  
9 Q. Sir, the cover e-mail says: Please plan to  
10 start executing the new process on Monday, October  
11 27th.  
12 Do you see that?  
13 A. Yes, sir.  
14 Q. Are you telling the jury this process was  
15 never implemented?  
16 A. There was a process implemented. I don't  
17 know the exact day and time it was implemented, and  
18 I don't know that this was the one that was  
19 implemented, because this doesn't look like what I'm  
20 used to seeing.  
21 Q. Well, sir, if you look then at option number  
22 2, right, it says: Unusual order does not appear to  
23 be an error and is questionable according to the DC  
24 associate.  
25 Correct, do you see that?

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1 A. Yes, sir.  
2 Q. Was that process ever implemented at 6045?  
3 A. I don't remember us doing that. That's what  
4 I'm saying, I don't remember this. I don't know if  
5 this was -- if it was changed before it was  
6 implemented, I don't know if -- I'm just saying  
7 this -- what I know in Reddwerks was the orders were  
8 flagged, we sent those orders to the home office.  
9 Q. Well, sir but that's not the -- that's not  
10 the procedure described here, correct, you would  
11 agree with me on that?  
12 A. It doesn't look that way.  
13 Q. Right? Because it says under option 2: The  
14 DC associate cuts any questionable orders to zero.  
15 Did you ever do that, did you ever cut any  
16 questionable orders to zero?  
17 A. I don't remember, not without being told to  
18 cut them to zero.  
19 Q. You never made the decision yourself to cut  
20 them to zero, right?  
21 A. Correct.  
22 Q. So it's your testimony, sir, that this  
23 procedure as reflected in Exhibit 14 was never  
24 executed at DC6045; is that correct?  
25 A. To the best of my knowledge, it wasn't.

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1 Q. And to the best of your knowledge, did the  
2 procedure we've been discussing today continue past  
3 this date?

4 MR. MAZZA: Objection as to form.

5 A. Again, I don't -- I don't know the date that  
6 we started the new automated process in Reddwerks,  
7 so I don't know what that is.

8 Q. Well, sir, but that new automated process  
9 still required you to send the Over 20 reports,  
10 correct?

11 A. We would have sent those up until that new  
12 process took over.

13 Q. Okay. And what happened after that new  
14 process took over? Sorry, let me strike that and  
15 let me ask a better question.

16 After that new process took over, what were  
17 your responsibilities with respect to suspicious  
18 order monitoring?

19 A. The orders that came into Reddwerks as  
20 flagged, we sent those to the home office. They  
21 reviewed them.

22 Q. So your only role in that process was to  
23 simply hit send; is that correct?

24 A. Yes, sir.

25 Q. And what were you sending at that point?

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1 A. Orders that this is --

2 MR. MAZZA: Objection as to form. Go ahead.

3 A. Orders that the system had flagged based on  
4 the qualifiers that they had built into that  
5 application.

6 Q. And even under this new procedure, you would  
7 still ship those orders the same day, correct?

8 MR. MAZZA: Same objection.

9 A. At this -- when the new process rolled in,  
10 there were times where we didn't ship it because it  
11 would hold that order until the home office  
12 responded.

13 Q. So did the new process require an order that  
14 was referred to the home office to be held until the  
15 home office approved it for shipment?

16 A. So all the orders that were flagged were  
17 sent to the home office, and unless the home office  
18 released those orders, they still -- we still held  
19 those orders.

20 Q. So in other words, those held orders were  
21 not shipped until the home office approved them for  
22 shipping; is that correct?

23 A. Yes, sir.

24 Q. And when was that policy first implemented?

25 A. Again, I don't -- I don't know the date. It

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1 was -- it was in this '14, '15 time frame, when the  
2 new --

3 Q. Well, let's look at some more documents,  
4 maybe we can narrow it down. Okay?

5 Did anyone ever tell you why the process,  
6 this new process you've described would require  
7 orders that were flagged to be held until they were  
8 cleared?

9 A. I was just told that they were -- we were  
10 holding those until the home office had time to  
11 review them. I mean, that's the explanation we were  
12 given.

13 Q. And who told you that?

14 A. I don't remember who told me that. When we  
15 rolled out the process, it was just part of the  
16 discussion we had about, here's the training and  
17 here's what you do, so --

18 Q. Did you receive training on that new  
19 process?

20 A. Yes, sir.

21 Q. In what form was that training?

22 A. I believe when we -- when it was turned on  
23 and activated and we started using it. We had  
24 different people that were on that team of the  
25 people who were building that process were over

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1 explaining that to us, like this is what you need to  
2 do with this, so just normal training with a new  
3 process that come out.

4 Q. Were you provided any training materials,  
5 written materials in the context of that new  
6 process?

7 A. I don't remember any written or -- I mean,  
8 I'm sure there were, I just don't -- I don't  
9 remember if we were handed any or not.

10 Q. Well, who conducted the training?

11 A. I really don't remember.

12 Q. I mean, this was a pretty big change from  
13 the way you conducted business, correct?

14 MR. MAZZA: Objection as to form.

15 A. It wasn't -- it wasn't a big change. I  
16 mean, it was just more automated.

17 Q. Well, and now orders are being held for  
18 longer, correct? Well, strike that.

19 Orders are now being held until they are  
20 approved for shipment by HO, correct?

21 A. Well, I mean, before this, we weren't told  
22 to hold an order. We sent the order because, you  
23 know, unless we were told to do something with the  
24 order, that was the direction we were given, so --

25 Q. And now you're being told to hold the order



<p style="text-align: right;">Page 170</p> <p>1 until you receive affirmative approval to send it,  2 correct?  3 A. That's what we were told.  4 Q. And how long were those orders being held on  5 average?  6 A. On average, they typically got back to us on  7 the same day.  8 Q. Were there circumstances when they didn't  9 get back to you on the same day?  10 A. There were circumstances, yes.  11 Q. And how often would that occur?  12 A. Not -- not very often. I don't -- I mean, I  13 don't know. It wasn't -- I mean, it wasn't all the  14 time. It was -- there were some that we would have  15 to hold, but I couldn't tell you, like, how many or  16 how often. It was just -- I knew we had some.  17 Q. And was this new process still reliant on  18 the threshold criteria that was implemented before,  19 meaning the Over 20s for Hydro -- I mean for oxy-30s  20 and over 50s for everything else?  21 MR. MAZZA: Objection to form.  22 A. I don't -- I don't know what the criteria  23 for when they flagged the orders in the process. I  24 don't know what the criteria was. I knew it was  25 item and quantity, so -- if there was anything else,</p>	<p style="text-align: right;">Page 172</p> <p>1 make sure that it was accurate and safe didn't  2 change, but the process of running the spreadsheet  3 and sending that out changed, yes, sir.  4 Q. All right. When you say your responsibility  5 to the product was to make sure that it was accurate  6 and safe, what do you mean?  7 A. Making sure the orders that we got from the  8 stores, that they got exactly what they ordered in  9 the right -- the right item that they ordered, and  10 then to make sure that that order got to the store  11 safely.  12 Q. What do you mean by safely?  13 A. Just to monitor and track that product all  14 the way to the store.  15 Q. And why were you required to monitor and  16 track that product?  17 A. Just to make sure that it got to the store.  18 I mean, just to ensure that that product got to the  19 store.  20 Q. And why was that an important part of your  21 job?  22 A. I mean, I would think that would be an  23 important part of any job, to make sure if I have  24 product and I'm sending it to somebody, that it got  25 there.</p>
<p style="text-align: right;">Page 171</p> <p>1 I don't know.  2 Q. Well, would the criteria be reflected on the  3 reports you sent?  4 MR. MAZZA: Same objection.  5 A. With the new process, we didn't send any  6 reports.  7 Q. Sir, before you stated that, when the orders  8 came into Reddwerks as flagged, we sent those to the  9 home office.  10 A. Yes, sir.  11 Q. So what were you sending to the home office?  12 A. So there was a button in the application  13 next to each flagged order that said, send to home  14 office. So we would click the button.  15 Electronically, it sent that order over to the home  16 office and then we waited for a response from the  17 home office. They would electronically send that  18 order back to us with what to do with the order.  19 Q. So is it correct that your only  20 participation in this new process was to click the  21 button?  22 A. Yes, sir.  23 Q. So this new process significantly reduced  24 your responsibilities at the DC; is that correct?  25 A. Well, my responsibility to the product, to</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Is it particularly important for schedule 2  2 narcotics, sir?  3 MR. MAZZA: Object to form.  4 Q. Well, sir, I'm asking you, do you believe  5 it's particularly important for schedule 2 narcotics  6 to arrive at the store?  7 A. I believe it's important that those -- that  8 those orders get to the store safely, yes, sir.  9 Q. And particularly so for abusive drugs,  10 correct?  11 A. I think with -- with this type of product,  12 it's important that it gets to the store safely.  13 Q. What do you mean by this type of product?  14 A. Well, there is a lot of controls around this  15 type of drug.  16 Q. And are you familiar with those controls?  17 A. I'm familiar with the -- I mean the policies  18 and procedures that I was given to make sure those  19 get there safely.  20 Q. Are those written policies and procedures?  21 A. Yes, there are.  22 Q. And what are those requirements?  23 A. Off the top of my head, I don't know exactly  24 what they are. I just -- to make sure we, you know,  25 we sent those to the store and then we tracked</p>

<p style="text-align: right;">Page 174</p> <p>1 those -- we had associates that tracked those to</p> <p>2 make sure that they got there to the store. If</p> <p>3 there was a -- any kind of a hitch in that, they</p> <p>4 would call the store, ask if they got it, we would</p> <p>5 work with the carrier who was taking it to, you</p> <p>6 know, find out where that product was.</p> <p>7 Q. And this was important because these were</p> <p>8 drugs that could be abused, right, and people were</p> <p>9 dying every day from abusing these drugs, right?</p> <p>10 MR. MAZZA: Objection as to form.</p> <p>11 Q. Do you know that, sir, do you know whether</p> <p>12 people are dying from abusing these drugs?</p> <p>13 MR. MAZZA: Same objection.</p> <p>14 A. I mean, what I see on TV, yes, sir.</p> <p>15 Q. Other than what you've seen on TV and your</p> <p>16 experience at work, did you know that people were</p> <p>17 dying in 2007, 2008, 2009 from abusing these</p> <p>18 schedule 2 narcotics?</p> <p>19 A. I didn't know.</p> <p>20 Q. Never -- it was never discussed?</p> <p>21 A. No, sir.</p> <p>22 Q. It wasn't part of your consideration in</p> <p>23 making sure these got to where they were supposed to</p> <p>24 go?</p> <p>25 MR. MAZZA: Object as to form.</p>	<p style="text-align: right;">Page 176</p> <p>1 other?</p> <p>2 A. No, sir.</p> <p>3 Q. What about your family, has it affected your</p> <p>4 family at all?</p> <p>5 A. Not my family, no, sir.</p> <p>6 Q. Have you ever taken an opioid product?</p> <p>7 A. No, sir.</p> <p>8 Q. Do you know anyone who has?</p> <p>9 A. No, sir.</p> <p>10 (Abernathy Exhibit 15 was marked for</p> <p>11 identification.)</p> <p>12 BY MR. BOWER:</p> <p>13 Q. Sir, you've been handed what's been marked</p> <p>14 as Exhibit 15, an e-mail from Nita Mix to yourself</p> <p>15 and Kristy Spruell, and the Bates number is 16261.</p> <p>16 And while you're reviewing it, I will tell</p> <p>17 you, I'm not going to spend too much time on this</p> <p>18 document, I just have a few general questions, but</p> <p>19 take your time.</p> <p>20 A. Okay.</p> <p>21 MR. MAZZA: While we have a lull in the</p> <p>22 action, are you guys going to use the same</p> <p>23 exhibits tomorrow? I mean, not literally the</p> <p>24 same exhibits but the same ordering sequence? If</p> <p>25 you haven't decided, that's fine.</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Making sure those drugs, orders, got to the</p> <p>2 store safely was part of my job, so that's what I</p> <p>3 did.</p> <p>4 Q. Sir, do you understand why these schedule 2</p> <p>5 opioid products are classified as schedule 2?</p> <p>6 A. I mean, I understand that C2 drugs are</p> <p>7 addictive.</p> <p>8 Q. Highly addictive?</p> <p>9 A. It's why they are classified that way.</p> <p>10 Q. You understand they are highly addictive,</p> <p>11 correct?</p> <p>12 A. I don't know to what degree. I'm not a</p> <p>13 pharmacist, but, I mean, I know they are addictive.</p> <p>14 Q. How do you know that?</p> <p>15 A. When I came on, I was told that.</p> <p>16 Q. And who told you that?</p> <p>17 A. I don't remember the exact person. I just,</p> <p>18 you know -- you will be dealing with C2s, and they</p> <p>19 are classified this way because they are classified</p> <p>20 as addictive.</p> <p>21 Q. Has the opioid epidemic affected your</p> <p>22 community at all?</p> <p>23 A. I mean, I'm sure it has but I don't -- I</p> <p>24 don't know.</p> <p>25 Q. You don't know specifically one way or the</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. BOWER: We can figure it out. Either</p> <p>2 way, whatever is easier.</p> <p>3 MR. INNES: Is your question are we going to</p> <p>4 pick up from the last digit?</p> <p>5 MR. MAZZA: Yeah, that, or are you going to</p> <p>6 refer to, like, Abernathy 10 tomorrow --</p> <p>7 MR. BOWER: Probably pick up from the last</p> <p>8 digit. I don't think --</p> <p>9 MR. MAZZA: If you repeat you repeat?</p> <p>10 MR. BOWER: I'll try to not do that, but --</p> <p>11 MR. MAZZA: Good luck.</p> <p>12 BY MR. BOWER:</p> <p>13 A. Okay.</p> <p>14 Q. Are you ready, sir?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. This document refers to a web form,</p> <p>17 correct? Do you see in the subject line it says, RU</p> <p>18 logistics SOM web form?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And SOM refers to suspicious order</p> <p>21 monitoring, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. During this time period, in November 2014,</p> <p>24 was DC6045 filling out a suspicious order monitoring</p> <p>25 web form in the course of its business?</p>

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1 A. I don't remember filling out a suspicious  
2 order monitoring web form.  
3 Q. Who is Nita Mix?  
4 A. I don't know. I don't know who Nita Mix is.  
5 Q. Well, sir, do you see the first line of her  
6 e-mail to Kristy Spruell and yourself says: "Jeff -  
7 I adjusted the form to cc you..."  
8 Do you see that?  
9 A. Yes.  
10 Q. Do you know why the form would be cc'ing  
11 you?  
12 A. No, sir.  
13 Q. Sir, during this time period, late 2014,  
14 were you attending meetings discussing the SOM  
15 project?  
16 A. I mean, I don't -- during this time frame, I  
17 don't know that I was particularly going to meetings  
18 about that process. I mean, I did have some  
19 meetings where the new process that we put into  
20 Reddwerks, they would ask for input occasionally,  
21 but, I mean, I don't know which ones I went to and  
22 which ones I didn't. I don't remember that.  
23 Q. And the new process was still the Reddwerks  
24 process we've talked about earlier today?  
25 A. The process where it became more automated,

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1 yes.  
2 Q. So as of at least late 2014, it still hasn't  
3 been implemented, correct?  
4 A. I mean I -- I don't remember the exact day  
5 it was implemented.  
6 (Abernathy Exhibit 16 was marked for  
7 identification.)  
8 BY MR. BOWER:  
9 Q. Sir, you've been handed what's been marked  
10 Exhibit 16 and it's just a one-page e-mail  
11 referencing SOM policy. Do you see that?  
12 A. Yes, sir.  
13 Q. And do you know who Brian Frank was or is?  
14 A. He is asset protection manager with the  
15 logistics system, logistics, Health & Wellness  
16 Logistics.  
17 Q. Sorry. Did you say health and logistics?  
18 A. Health & Wellness Logistics.  
19 Q. So does he work at the home office?  
20 A. Well, according to the e-mail he works out  
21 of 6013, DC6013 in Georgia.  
22 Q. Do you have any idea why he would be asking  
23 whether the new procedure for monitoring controls  
24 has replaced the old procedure?  
25 A. Can I read it?

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1 Q. Sure. Please, take your time.  
2 A. Okay.  
3 Q. So the question is do you have any idea why  
4 he would be asking whether the new procedure for  
5 monitoring controls has replaced the old procedure?  
6 A. No, sir.  
7 Q. Do you have any idea why Kristy forwards his  
8 e-mail to you?  
9 A. No, sir.  
10 Q. No recollection of this?  
11 A. No, sir.  
12 Q. Do you know what the reference to SOM policy  
13 is?  
14 I mean, she's only sending it to you and  
15 Teresa, correct?  
16 MR. MAZZA: Objection as to form.  
17 A. I guess.  
18 Q. And you're telling me you don't know what  
19 she's asking about?  
20 A. Well, concerning the e-mail below with the  
21 SD405.  
22 Q. Yes, sir.  
23 A. I don't -- I -- that was a process that  
24 Jimmy handled in our DC, so I know that Jimmy was  
25 our AP manager, so he handled that, so I don't know

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1 why she would have cc'd me on it, but he's the one  
2 who handled that process for us.  
3 Q. And what is the process you're referring to?  
4 A. The SD405, again, like I said, it was  
5 something that Jimmy was doing before I came to the  
6 DC, and he continued to do it. Just with  
7 conversation with him, it was -- he -- it was a  
8 report he ran I think, and we had talked about it  
9 earlier, where he ran it once a month and then  
10 whatever he did with it, but like I said, I don't --  
11 that wasn't part of what I do and I haven't done it.  
12 Q. Okay.  
13 A. And I wouldn't know why she would send that  
14 to me unless she thought that that's what I did. I  
15 don't know, but --  
16 Q. Okay. But it's fair to say then that Jimmy  
17 was still running those 405 reports at the end of  
18 2014; is that correct?  
19 A. I don't know when Jimmy was running them and  
20 not running them.  
21 Q. Did you respond to Kristy, do you recall?  
22 A. I don't recall.  
23 (Abernathy Exhibit 17 was marked for  
24 identification.)  
25 BY MR. BOWER:

<p style="text-align: right;">Page 182</p> <p>1 Q. Sir, you've been handed what's been marked 2 Exhibit 17. It's a series of e-mails between 3 Stephanie Adams and yourself and I'm going to ask 4 you some questions on your knowledge of the 5 Reddwerks update, and other issues referenced in 6 your e-mail on Wednesday January 14th at 10:54 a.m. 7 The Bates number of this document ends in 9277. 8 It's a one-page e-mail, right, sir? 9 A. Yes, sir. 10 Q. Have you had a chance to review it? 11 A. I just -- I need the top two real quick. 12 Q. Okay. 13 A. Okay. 14 Q. All right, sir. During this time period, 15 January 2015, did Stephanie Adams have any role in 16 this suspicious order monitoring process? 17 A. She would have had a role in the DC that she 18 was in for schedule 3 through 5s. 19 Q. And she's in DC6028? 20 A. Yes, sir. 21 Q. Do you have any idea why she's e-mailing 22 you? 23 A. I mean, not particularly. Probably just to 24 ask, you know. I mean, I don't know of a specific 25 reason why she was e-mailing me.</p>	<p style="text-align: right;">Page 184</p> <p>1 Q. Well, okay, well, I don't want you to guess. 2 If you don't remember, you know, this is going back 3 to 2015, right? 4 A. Yes. 5 Q. Well, let me ask you this. We looked 6 earlier at an Over 20/50 report that you -- 7 Exhibit 13 that you sent in October 2014, right? 8 And now we're about three months later? 9 A. Yes, sir. 10 Q. Do you recall there being any change in, you 11 know, a policy for flagged items between October 12 2014 and January 2015? 13 A. I don't remember any. I'm -- 14 Q. Well, after you refer to the four-week 15 threshold, you say: We are in the last stages of 16 the RW update which will allow the manager 17 monitoring the suspicious orders to send that order 18 to the HO compliance team for review. 19 Do you see that? 20 A. Yes. 21 Q. Do you know who the manager in quotes there 22 refers to? 23 A. It would be the manager who comes in in the 24 morning to look at the orders. 25 Q. And that would be either you and Mr. Sherl</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Well, she's asking you specifically about 2 the suspicious order monitoring procedure, correct? 3 A. Yes. 4 Q. All right. So she suspects that you know 5 what that procedure is, right? 6 A. Yes. 7 Q. Did you in fact know what that procedure 8 was? 9 A. Well, I knew what we were doing through the 10 Reddwerks system, so -- 11 Q. Well, during this time period, January 2015, 12 other than what was happening through the Reddwerks 13 system, was there any other policy and procedure in 14 place with respect to suspicious order monitoring 15 for schedule 2 narcotics? 16 A. I mean, that -- I don't think so. This 17 is -- I mean we were -- we were using the Reddwerks 18 system. 19 Q. This mentions a four-week threshold. Do you 20 see that? 21 A. Yes, sir. 22 Q. What does that mean? 23 A. I don't know. Well, so the four-week 24 threshold must be referring to -- I mean, I don't 25 know. I'm trying to remember.</p>	<p style="text-align: right;">Page 185</p> <p>1 still, sir? 2 A. Yes. 3 Q. So it's your belief that even in January 4 2015, you were still performing that function, 5 correct? 6 A. Yes, sir. 7 MR. MAZZA: Objection as to form. 8 Q. I'll rephrase. 9 Sir, is it your testimony that in January 10 2015 you -- either you or Mr. Sherl were still 11 providing the Over 20 reports to the home office? 12 A. Yes, sir. 13 (Abernathy Exhibit 18 was marked for 14 identification.) 15 MR. MAZZA: You go ahead and I'll do the 16 housekeeping. 17 BY MR. BOWER: 18 Q. Sir, why don't you take a moment to review 19 Exhibit 18, which you've just been handed. It's an 20 e-mail from Brooke Leverett to Gregory Beam, George 21 Chapman, Gary Smith, Brenda Johnson and Cc'ing 22 yourself and Kristy Spruell, dated 10/24/14 and the 23 Bates number ends in 42782. I'll note that this is 24 a -- the attachment appears to be a 405 report which 25 we've discussed a few times today and I just want to</p>

<p style="text-align: right;">Page 186</p> <p>1 ask some questions on that.</p> <p>2 Are you ready, sir?</p> <p>3 A. Yes, sir.</p> <p>4 Q. So were these reports used at all in</p> <p>5 suspicious order monitoring?</p> <p>6 A. These are the 405 reports that Jimmy used,</p> <p>7 so --</p> <p>8 Q. And were they used in connection with</p> <p>9 suspicious order monitoring at DC6045?</p> <p>10 A. They were used to, I guess, monitor orders,</p> <p>11 that's what they -- that's when they used them.</p> <p>12 Q. Who used them to monitor orders?</p> <p>13 A. Jimmy used those.</p> <p>14 Q. Do you have any knowledge as to how he used</p> <p>15 them?</p> <p>16 A. No, sir.</p> <p>17 Q. Did you yourself use them?</p> <p>18 A. No, sir.</p> <p>19 Q. Other than seeing it now, do you ever recall</p> <p>20 seeing one before?</p> <p>21 A. Yes, sir, I've seen one before, but I</p> <p>22 didn't -- it was just a -- more of a knowledge level</p> <p>23 of Jimmy saying, this is what I do, showed me some</p> <p>24 stuff, and then moved on. It wasn't like a, you</p> <p>25 know, you need to learn this or anything like that.</p>	<p style="text-align: right;">Page 188</p> <p>1 MR. MAZZA: Objection as to form.</p> <p>2 A. I didn't receive these reports.</p> <p>3 Q. Do you recall any specific reason why you</p> <p>4 received this report?</p> <p>5 A. I don't know why I would have received this</p> <p>6 report.</p> <p>7 Q. Do you know why Brooke Leverett is running</p> <p>8 the report?</p> <p>9 A. I don't know why she's running it either.</p> <p>10 Q. Did you ever ask anybody?</p> <p>11 A. No, sir.</p> <p>12 Q. Do you recall receiving it in October 2014?</p> <p>13 A. I don't remember receiving it.</p> <p>14 (Abernathy Exhibit 19 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. BOWER:</p> <p>17 Q. Sir, you've been handed what's been marked</p> <p>18 Exhibit 19, which is an e-mail from yourself to</p> <p>19 James Greer Cc'ing Kristy Spruell from November 5th</p> <p>20 2014. Referencing again SOM web forms. Do you see</p> <p>21 that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Does this refresh your recollection</p> <p>24 regarding what the SOM web forms were?</p> <p>25 A. Can I read it?</p>
<p style="text-align: right;">Page 187</p> <p>1 It was just a this is the 405 report and it was</p> <p>2 just -- I mean, that's how I saw it. Other than</p> <p>3 that, I didn't. I knew he kept them on his desk.</p> <p>4 Q. Sir, did you ever consider using them in</p> <p>5 connection with your suspicious order monitoring</p> <p>6 duties?</p> <p>7 A. No, sir.</p> <p>8 Q. Why not?</p> <p>9 A. I don't know. I mean, I -- I didn't know to</p> <p>10 use them in my -- it wasn't part of what I do</p> <p>11 day-to-day, so --</p> <p>12 Q. Sir, this breaks down the report itself</p> <p>13 provides a store number, right, and then item</p> <p>14 description and then percent, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you think it would have been useful in</p> <p>17 your decision whether to cut orders?</p> <p>18 A. I don't know.</p> <p>19 Q. Sitting here today, do you think it would</p> <p>20 have been helpful to look at these reports and the</p> <p>21 store numbers to determine whether the order was</p> <p>22 suspicious or not?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you recall receiving these orders on a</p> <p>25 monthly basis?</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. Sure. Please do. Sorry. Okay. Have you</p> <p>2 had a chance to review it?</p> <p>3 A. Yes, sir.</p> <p>4 Q. So let's go back to my question. Does this</p> <p>5 refresh your recollection what do SOM web forms</p> <p>6 refer to?</p> <p>7 A. From reading, it's talking about the web</p> <p>8 forms that the stores submit to us.</p> <p>9 Q. What was the purpose of those forms?</p> <p>10 A. As I stated earlier, if a store -- so prior</p> <p>11 to the hydro conversion, stores only got orders once</p> <p>12 a week. So if a store needed something, but they</p> <p>13 couldn't wait until their order hit the next week,</p> <p>14 they would submit an order -- they would submit a</p> <p>15 web form to the DC so that we could put that store</p> <p>16 in the pick batch for the next day, then they would</p> <p>17 go in and key the order that they needed, we would</p> <p>18 go and collect that order the next day. So that was</p> <p>19 the web form process.</p> <p>20 Q. So when it refers to your statement, if 6045</p> <p>21 wants to fill out the web form and can, what does</p> <p>22 that mean?</p> <p>23 A. It just meant for us to move that order into</p> <p>24 that pick day.</p> <p>25 Q. Does that mean approve the order? In other</p>



<p style="text-align: right;">Page 190</p> <p>1 words, does someone have to fill out a web form in  2 order for it to be picked and shipped?  3 A. So -- so the order was for -- you could make  4 the web form order for two bottles of three  5 different items. It just went into the normal  6 process that we would do for picking that order and  7 then we would follow the same, you know, procedure,  8 you know, for monitoring those orders when that  9 order came out.  10 Q. Well, what does it mean then to fill out the  11 web form? I mean, those are your words, correct?  12 A. I think by reading it, I think that I asked  13 Kristy those questions and she responded and I just  14 cut those answers out of her e-mail and pasted them  15 in here and sent them to Jim, but we at the DC, we  16 didn't fill out the web form because we didn't have  17 the ability to do that. That was from the store  18 side.  19 Q. Well, sir, your e-mail says if 6045 wants to  20 fill out the web form, it can.  21 Are you saying that's not an accurate  22 statement?  23 A. It's not an accurate statement. We couldn't  24 fill it out. We just -- all we did is take the web  25 form and add that store to the next day's pick.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. No, sir.  2 Q. Are those your words?  3 A. Again, I'm -- I think I would have copied  4 and pasted that. That's -- I think that was what  5 Kristy sent to me, that that's what the answer was.  6 Q. Did she send you an e-mail with those  7 answers?  8 A. I mean --  9 Q. Well, where would you have copied and pasted  10 it from?  11 A. If she did, that's what I would have done,  12 so I'm -- I'm trying to remember if that's what  13 happened or not.  14 Q. Well, let me ask you a question then. Why  15 is it an error -- why -- strike that.  16 Why would Walmart consider something an  17 error if a pharmacist wanted to stock up?  18 A. I think the -- I think the feel was at this  19 time, as I explained before, that stores were  20 getting orders just once a week. Once we switched  21 to hydro being a C2, the order points changed, order  22 days changed from once a week to twice a week, so my  23 understanding is the feel was that because  24 pharmacists thought they were only going to get  25 orders once a week or less than what they were used</p>
<p style="text-align: right;">Page 191</p> <p>1 That's what the web form was, to notify us to do  2 that.  3 Q. And sir, what about the next paragraph  4 there, referencing the error as a reason code for  5 cutting an order. Do you see that?  6 A. Yes, sir.  7 Q. So during this time period did you have to  8 enter a reason code when you cut an order?  9 A. I don't remember entering a reason. We  10 did -- there was one where -- I forget what it said  11 but inventory -- I can't remember what the reason  12 code was on the spreadsheet that we sent.  13 Q. Well, do you know why you are telling  14 Mr. Greer that you have to select error as a reason  15 code for cutting an order?  16 A. I don't remember the question Jim was  17 asking. I don't remember selecting error. I don't  18 remember that being something I would enter.  19 Q. Sir, you state that: Such as, due to the  20 change of hydro to a C2, some pharmacists feel they  21 need to stock up. Do you see that?  22 MR. MAZZA: Objection as to form.  23 A. Yes, sir.  24 Q. Did you talk to pharmacists yourself who  25 provided you with that explanation?</p>	<p style="text-align: right;">Page 193</p> <p>1 to receiving that product, they felt a need to stock  2 up on that item.  3 Q. Why would that be considered an error?  4 Wouldn't that be an intentional desire to stock up?  5 A. I don't know why it would be considered an  6 error.  7 Q. Would you agree that wouldn't be an error,  8 right? It would be an intentional order, right?  9 MR. MAZZA: Objection; form.  10 A. I'm sorry. Could you repeat the question?  11 Q. Well, sir, I'll rephrase. Here you're  12 sending an e-mail to Mr. Greer, correct?  13 A. Yes.  14 Q. And you're explaining why selecting an error  15 as a reason code for cutting an order, right?  16 A. Yes.  17 Q. And you're stating that many things could be  18 considered an error other than just miskeying an  19 order, right? My question to you is, even if it's  20 something you cut and pasted that Ms. Spruell wrote,  21 why would Walmart be considering a pharmacists  22 desire to stock up an error?  23 MR. MAZZA: Same objection.  24 A. I think what they were trying to do was, my  25 understanding was that they didn't want the</p>

<p style="text-align: right;">Page 194</p> <p>1 pharmacists to feel like they weren't going to get 2 what they needed from the DC just because of the 3 change from C3 to C2, so -- 4 Q. But the pharmacists are placing an order, 5 correct? 6 A. The pharmacist was placing an order, plus 7 the system was ordering as well, so -- 8 Q. An order was being placed, correct? 9 A. Yes. 10 Q. And Walmart is cutting some of those 11 ordered, correct? 12 MR. MAZZA: Objection; form. 13 A. I mean, if we were cutting them, we were 14 being told to cut them. 15 Q. Right. And you had -- it appears from this, 16 right, you had to provide a reason that you were 17 cutting, correct? 18 A. Okay. Yes. 19 Q. Right? And you're stating that pharmacists 20 shouldn't stock up, right, thus it's an error in 21 decision-making, right, so the pharmacist just made 22 an error in their decision, not an error in their 23 order, right? 24 A. Yes. 25 Q. What was the -- from Walmart's perspective,</p>	<p style="text-align: right;">Page 196</p> <p>1 to order more to make sure I have enough. 2 Q. Okay. And what do you mean when you say we 3 moved from a one-day to a two-day process? 4 A. So at the time we were sending C2s to each 5 store one day a week, four days a week, so once 6 hydro was switched to a C2, because, you know, there 7 were other DCs feeding other stores, the hydro, 8 because it was another -- schedule 3s were in other 9 warehouses, when that all came to warehouse 45, 10 the -- just the volume we were sending out every day 11 was higher based on that because across the network 12 it was the same, but it was all coming out of one 13 warehouse rather than five other warehouses. 14 So in order to make sure the pharmacists 15 could get what they needed, we decided to go to a 16 two-day a week schedule for filling those orders 17 rather than a one-day. 18 Q. So does that mean it took longer for the 19 orders to fill, or the pharmacists had to order less 20 often, or potentially both? 21 A. Both. 22 Q. Okay. Let's break those down then. Why 23 would it take the orders longer to fill? 24 A. Well, we were adding more items to our 25 normal process, so, I mean, it would just -- you</p>
<p style="text-align: right;">Page 195</p> <p>1 what was the error in the decision? 2 MR. MAZZA: Objection; lacks foundation. 3 Q. Well, based on your experience for providing 4 cut 20 orders and reviewing orders for four to five 5 years, why would a desire by pharmacists to stock up 6 be considered an error in decision-making? 7 A. Because I feel like the reason they were 8 wanting to stock up was because they didn't feel 9 like they were going to be able to get the orders 10 they needed, which we felt like they would be able 11 to get those orders. 12 Q. Why would -- why do you believe pharmacists 13 felt they wouldn't be able to get the orders? 14 What's the basis for that statement? 15 A. I don't know. I don't know the reasoning 16 why. 17 Q. Well, sir, your testimony was, and I quote: 18 Because I feel like the reason they were wanting to 19 stock up was because they didn't feel like they were 20 going to be able to get the orders they needed. 21 So what's your basis for that statement? 22 A. Because we moved from a one-day to a two-day 23 process. They had previously been getting orders, 24 hydro orders every day, so I believe that they felt 25 like I'm only going to get this twice a week, I need</p>	<p style="text-align: right;">Page 197</p> <p>1 know, we would have to pick more bottles and put 2 them in an order to ship out, so -- 3 Q. Sir, I'm asking about the policy that was 4 changed from one-day to a two-day. Okay? 5 A. Okay. 6 Q. Did that policy change impact how often a 7 pharmacist could place an order? 8 A. It -- it made it so that he -- can place an 9 order but we only went out and captured those orders 10 twice a week. 11 Q. So in other words, it would take the order 12 longer to fill once it was placed; is that correct? 13 A. Than he was used to with it being the 14 schedule 3, hydro being a schedule 3. 15 Q. Was this policy change only made with 16 respect to hydro, or was it all schedule 2s? 17 A. This was changed once hydro became a 18 schedule 2, so it affected all the other drugs we 19 were distributing at the time as well. 20 Q. And when was the policy change made? 21 A. Once we found out that it was for sure that 22 hydro was moving to schedule 2. The home office 23 team and whoever they had involved, you know, made 24 that decision to change that process to if 25 ordering -- to sending out orders to each store</p>

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1 twice a week rather than once a week.

2 Q. But sir, weren't you still preparing the  
3 over 20/50 reports on a daily basis once hydro was  
4 changed to schedule 2?

5 A. Yes, sir.

6 Q. So can you explain why you were doing that  
7 on a daily basis if the orders were only picked  
8 every two days?

9 A. Yeah, absolutely. So just so -- so before,  
10 when we were sending once a week, so we would -- a  
11 group of stores would be sent on Monday, a different  
12 group on Tuesday, a different group on Wednesday and  
13 a different group on Thursday. Once hydro went C2  
14 and we changed the process to every store twice a  
15 week, groups of stores would get an order on Monday  
16 and they would also get an order on Wednesday, and  
17 then the other half of the stores would get an order  
18 on Tuesday and the order on Thursday.

19 So every day we were doing orders. So I was  
20 running the report each day.

21 MR. MAZZA: Zach, whenever you are at a good  
22 spot.

23 MR. BOWER: Why don't we do that, I'll  
24 digest that answer and see if I have any  
25 follow-up questions.

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1 MR. MAZZA: I'm not trying to rush you.

2 MR. BOWER: No. I think it is a good time  
3 because I --

4 MR. MAZZA: Okay.

5 THE VIDEOGRAPHER: Going off the record at  
6 3:56.

7 (Recess from 3:56 p.m. until 4:14 p.m.)

8 THE VIDEOGRAPHER: Going back on the record.  
9 Beginning media file number 6. The time is 4:14.

10 BY MR. BOWER:

11 Q. Mr. Abernathy, I reviewed -- we reviewed  
12 your answer over the break and there is still a bit  
13 of confusion on our end regarding the switch from  
14 the one day to two day, so can you -- can we just  
15 take a step back then and can you describe for us  
16 what was happening before the switch?

17 A. So we sent one order to each store one day a  
18 week. Those were set up regionally, a certain area  
19 of the country would get orders on a Monday, certain  
20 areas Tuesday, Wednesday, and Thursday.

21 Q. So during that time period a pharmacy would  
22 receive one order per week, correct?

23 A. Correct.

24 Q. And how often would pharmacies be allowed to  
25 make an order during that time period?

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1 A. I'm not aware of a limit, but we only went  
2 and grabbed the orders for those stores once a week.  
3 I'm not aware of how the pharmacy handled going in  
4 and placing orders. I don't know if -- I don't know  
5 on that side of it, but as far as the DC, the  
6 distribution center, we went and grabbed those  
7 orders for this region on a Monday, this region on a  
8 Tuesday. So whatever orders had accumulated up to  
9 that point, we pulled.

10 Q. Okay. And now after the switch, what was --  
11 what change was made?

12 A. So the big -- well, big change, the change  
13 was they were able to get orders twice a week rather  
14 than once a week.

15 Q. So if pharmacies are getting orders now  
16 twice a week versus once a week, why are you stating  
17 that pharmacists are concerned about having enough  
18 hydrocodone if they are getting it more often? Can  
19 you explain that apparent discrepancy, because maybe  
20 I'm missing something?

21 A. I believe it was because they were used to  
22 getting those every day, and now they were switching  
23 to two days a week, so there were going to be more  
24 days they weren't going to get that order, so they  
25 were concerned that they -- you know, the orders

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1 they got would not be enough to get them to the next  
2 time their order got there.

3 Q. So -- so is it a true statement that when  
4 hydrocodone was a schedule 3, they were receiving  
5 those orders every day?

6 A. They were receiving orders every day. I  
7 don't know -- I don't know about hydro, if they  
8 received a hydro product every day. It wasn't in my  
9 DC, so I don't know.

10 Q. Well, but your e-mail specifically is about  
11 hydro, right?

12 A. But at that time it had come to the DC to  
13 6045.

14 Q. Right. But your statement as to why the  
15 pharmacists were concerned about the hydro supply  
16 was because they had previously been receiving it  
17 more often, correct?

18 A. Yes.

19 Q. So you must have known they were receiving  
20 it every day, correct?

21 A. I knew that they were receiving orders every  
22 day.

23 Q. Right.

24 A. For whatever those DCs had schedule 3  
25 through 5s and noncontrolled drugs.

<p style="text-align: right;">Page 202</p> <p>1 Q. You knew that pharmacies were receiving  2 hydro orders on a daily basis prior to becoming a  3 schedule 2, correct?  4 MR. MAZZA: Objection; form.  5 A. I don't know if the stores were receiving  6 hydro every day.  7 Q. You do know they were receiving it more  8 often than twice a week, correct?  9 A. Again, I don't know how often they were  10 receiving it. I know that they were on a five-day  11 order system when it was a schedule 3 through 5.  12 Q. But, sir, your statement and your position,  13 correct me if I'm wrong, is that pharmacists were  14 concerned because they were now receiving hydro less  15 often, correct?  16 A. Yes.  17 Q. And they were receiving hydro twice a week  18 when it became a schedule 2, correct?  19 A. Yes.  20 Q. So isn't it a true statement then that they  21 were receiving it more than twice a week when it was  22 a schedule 3?  23 A. The ability to receive it was there.  24 Q. Do you know whether they had the ability to  25 receive it daily?</p>	<p style="text-align: right;">Page 204</p> <p>1 identification.)  2 BY MR. BOWER:  3 Q. I'm going to give you Exhibit 21, which is  4 part of the same e-mail chain but it attaches the  5 Over 20 report which was left off of the other  6 e-mail chain. So we'll use those together. Okay?  7 Exhibit 21 is same e-mail string from  8 Gregory Beam, this last one is to Gary Smith, dated  9 January 27, 2015 and that Bates number begins with  10 30184.  11 Sir, my question will be focused on  12 Exhibit 20 and we'll just use the attachment to  13 Exhibit 21 to reference, but I want to include the  14 whole thing for the record. Okay?  15 A. Okay.  16 MR. MAZZA: Zach, just while he's reviewing,  17 the top e-mail on 21 --  18 MR. BOWER: Top e-mail on 21, yep.  19 MR. MAZZA: From Jeff at 7:42 a.m., that --  20 MR. BOWER: Sorry, I'm --  21 MR. MAZZA: Exhibit 21? Sorry, the second  22 e-mail on 21. I apologize.  23 MR. BOWER: Okay. Yeah. Yeah.  24 MR. MAZZA: The 7:42 a.m., just to orient,  25 that is the e-mail on page 2 of Exhibit 20.</p>
<p style="text-align: right;">Page 203</p> <p>1 A. If they ordered it daily, I would assume it  2 went daily.  3 Q. Do you know whether they could submit  4 multiple orders daily?  5 A. I don't know.  6 Q. Do you know whether anyone was monitoring  7 the order volume for hydro prior to it becoming a  8 schedule 2?  9 A. I don't know that.  10 Q. Do you know who would know that answer?  11 A. No, sir.  12 Q. You don't know who was monitoring for  13 schedule 3 prior -- strike that.  14 Do you know who, if anyone, was monitoring  15 hydrocodone orders when it was a schedule 3  16 narcotic?  17 A. I do not know.  18 (Abernathy Exhibit 20 was marked for  19 identification.)  20 BY MR. MAZZA:  21 Q. Sir, you've been handed what's been marked  22 as Exhibit 20. It's an e-mail from Mr. Beam to  23 yourself, dated January 28, 2015, the Bates number  24 is 30175 through 30177.  25 (Abernathy Exhibit 21 was marked for</p>	<p style="text-align: right;">Page 205</p> <p>1 MR. BOWER: Correct. Yeah.  2 MR. MAZZA: Okay.  3 MR. BOWER: The only reason the second one,  4 21 is included, is because that one has the  5 attachment.  6 MR. MAZZA: Yeah. The reason why I just  7 pointed it out, it looks like there is multiple  8 references to, here's the correct one, here's the  9 attachment, so --  10 MR. BOWER: I'm not.  11 MR. MAZZA: If you look at 20, right, the  12 first page of 20 at 11:29 there is another e-mail  13 that says, here is the corrected one.  14 MR. BOWER: Right. But the e-mail as  15 Walmart produced it, that didn't have an  16 attachment. If you see, there is no attachment  17 line from, to -- from, sent, to, subject. There  18 is no --  19 MR. MAZZA: I'm with you on 20. Yeah, I'm  20 with you.  21 MR. BOWER: Okay.  22 Q. Sir, have you had a chance to review  23 Exhibit 20?  24 A. Almost.  25 Q. Okay.</p>



<p style="text-align: right;">Page 206</p> <p>1 A. Okay.</p> <p>2 Q. Okay. Sir, these Over 20 reports, they were</p> <p>3 prepared in connection with the ordinary course of</p> <p>4 your business, correct?</p> <p>5 A. Yes.</p> <p>6 Q. They were part of your daily business</p> <p>7 activities, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And in this e-mail, let's start with your</p> <p>10 e-mail on Tuesday, January 27th, to Gregory Beam and</p> <p>11 Scott Peacock, do you see that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you have any recollection as to why you</p> <p>14 sent this e-mail to them in January 2015?</p> <p>15 A. Well, reading through it, it looked like we</p> <p>16 were using the new automated Reddwerks system and I</p> <p>17 was trying to explain that the report he still</p> <p>18 wanted, there could be some delays in some of that</p> <p>19 because we were now waiting for the home office team</p> <p>20 to let us know what to do with those orders.</p> <p>21 Q. So one of these individuals had communicated</p> <p>22 to you that they still wanted you to prepare these</p> <p>23 reports?</p> <p>24 A. Yes, sir. We had not been told not to</p> <p>25 produce them anymore.</p>	<p style="text-align: right;">Page 208</p> <p>1 determine the disposition of the items immediately</p> <p>2 to complete the Over 20 report.</p> <p>3 Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So that e-mail doesn't reflect that the HO</p> <p>6 would have some time to review the order, does it?</p> <p>7 A. Well, I mean, if they told us to cut it, we</p> <p>8 could go in and cut that and we would know after</p> <p>9 they gave us those instructions to do that, what the</p> <p>10 order would be.</p> <p>11 Q. But, sir, your e-mail says: We cut the</p> <p>12 orders at the DC level and could determine the</p> <p>13 disposition of the items immediately to complete the</p> <p>14 Over 20 report.</p> <p>15 Correct?</p> <p>16 A. After they told us what to do with it, we</p> <p>17 could do those things.</p> <p>18 Q. So is it your testimony, sir, that you</p> <p>19 wouldn't e-mail the Over 20 reports until the -- you</p> <p>20 determined whether the disposition of the items</p> <p>21 could be completed?</p> <p>22 MR. MAZZA: Objection; form.</p> <p>23 Q. I'll strike that, sir.</p> <p>24 Based on this e-mail, what was the process</p> <p>25 for the Over 20 reports?</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. Okay. And then you describe what the new</p> <p>2 process is, correct, in that e-mail, in that first</p> <p>3 paragraph?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And then you say: This process could take</p> <p>6 minutes, hours, and in some cases days, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And then you go on to describe the current</p> <p>9 process, which was the process before this new</p> <p>10 Reddwerks procedure, right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. That old process or the current process</p> <p>13 described here but referring to the process that had</p> <p>14 been ongoing since about 2010, correct?</p> <p>15 MR. MAZZA: Objection; form.</p> <p>16 Q. Well, let me strike that then.</p> <p>17 Sir, in your e-mail you refer to, in the</p> <p>18 current process, do you see that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is that the process we've discussed several</p> <p>21 times today where either you or Mr. Sherl would</p> <p>22 prepare the Over 20 reports and send them on to HO?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. In describing that process, you</p> <p>25 stated: We cut the orders at the DC level and could</p>	<p style="text-align: right;">Page 209</p> <p>1 A. We would come in, export the order file over</p> <p>2 to Excel, we would sort it based on the criteria</p> <p>3 given to us, and then we would send that over to the</p> <p>4 list of people, global investigations, AP</p> <p>5 management, compliance, and my general manager, and</p> <p>6 then we would wait for a response, if anything, we</p> <p>7 were supposed to do.</p> <p>8 Now, the ones that we had direction on as</p> <p>9 far as hydro -- I mean oxycodone 30, over 20, cut it</p> <p>10 to 20, those directions we had, we did those when</p> <p>11 those came up.</p> <p>12 Q. But, sir, your description here doesn't</p> <p>13 reflect that you had to wait for a response on the</p> <p>14 Over 20 report. It says you could determine the</p> <p>15 disposition of the items immediately to complete the</p> <p>16 report, right? That's what you state here.</p> <p>17 A. Well, we wouldn't cut an order until the</p> <p>18 home office told us what to do with it.</p> <p>19 Q. What does it mean to determine the</p> <p>20 disposition of the items, what does that mean? Does</p> <p>21 that mean whether the order should be filled or not?</p> <p>22 A. Well, until the home office reviews and</p> <p>23 decides what the disposition is.</p> <p>24 Q. But the home office can't do that until it</p> <p>25 gets the report, correct?</p>



<p style="text-align: right;">Page 210</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So again, I'm asking you, you state:</p> <p>3 We could determine the disposition of the items</p> <p>4 immediately to complete the report.</p> <p>5 Were you sending two reports to the home</p> <p>6 office or one?</p> <p>7 A. I was just sending one.</p> <p>8 Q. And was that one report the completed report</p> <p>9 you referenced here?</p> <p>10 A. Yes.</p> <p>11 Q. So once you sent that order, it was</p> <p>12 complete, and the -- you had already determined the</p> <p>13 disposition of the items; is that correct?</p> <p>14 A. Well, when I would have sent it, it would</p> <p>15 have -- I would have either got a response if I had</p> <p>16 a question or whatever, so --</p> <p>17 Q. Sorry. You would have gotten a response</p> <p>18 when you sent it? Is that your testimony? Sir,</p> <p>19 this is a critical issue. I'm trying to understand</p> <p>20 what the process was at Walmart for clearing these</p> <p>21 Over 20 Reports.</p> <p>22 MR. MAZZA: Objection to form.</p> <p>23 Q. And I'm trying to understand whether, in</p> <p>24 fact, you could determine the disposition of the</p> <p>25 items immediately to complete the Over 20 Report.</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. These reports were four times a week every</p> <p>2 week, right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. For four to five years, right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Never happened, to the best of your</p> <p>7 recollection? Home office never cut a single report</p> <p>8 to the best of your recollection, right?</p> <p>9 MR. MAZZA: Objection to form.</p> <p>10 A. Not to me. I mean, there were other people</p> <p>11 sending a report over, so I don't know -- I can't --</p> <p>12 I can't answer for them, but --</p> <p>13 Q. Well --</p> <p>14 A. -- for me, the reports I sent, no one ever</p> <p>15 told me to cut one.</p> <p>16 Q. It was you and Mr. Sherl. Anybody else that</p> <p>17 was sending the reports?</p> <p>18 A. Just me and Jimmy.</p> <p>19 Q. Did Jimmy ever tell you, hey, HO cut a</p> <p>20 report?</p> <p>21 A. No, sir.</p> <p>22 Q. Never -- never recall them saying that, do</p> <p>23 you?</p> <p>24 A. No, sir.</p> <p>25 (Abernathy Exhibit 22 was marked for</p>
<p style="text-align: right;">Page 211</p> <p>1 Is that an accurate statement?</p> <p>2 A. So the ones we cleared without sending to</p> <p>3 the home office would be the ones we were given</p> <p>4 directions on. Then we sent the report over, and we</p> <p>5 would -- again, if the -- if the home office</p> <p>6 responded to us after looking at it, then we</p> <p>7 would -- whatever they told us to do, that's what we</p> <p>8 would do.</p> <p>9 I believe that there were times I would have</p> <p>10 to send another report back to Greg and the Global</p> <p>11 Investigation Team saying, we heard back, here's the</p> <p>12 corrected amount. It just seems like -- it seems</p> <p>13 like that has happened. But we would not cut an</p> <p>14 order unless we were given direction to do that.</p> <p>15 Q. Sir, do you recall ever being given a</p> <p>16 specific direction to cut an order by the Home</p> <p>17 Office Team between 2010 and 2015?</p> <p>18 A. I don't remember a specific time.</p> <p>19 Q. Do you recall any single time? As you sit</p> <p>20 here today, do you recall it ever happening?</p> <p>21 A. I don't remember a time where I was given a</p> <p>22 direction to do that.</p> <p>23 Q. So that's a "no," you don't recall it ever</p> <p>24 happening? That's a true statement, correct?</p> <p>25 A. I don't -- I don't recall.</p>	<p style="text-align: right;">Page 213</p> <p>1 identification.)</p> <p>2 BY MR. BOWER:</p> <p>3 Q. Sir, you've been handed what's been marked</p> <p>4 Exhibit 22, which is -- begins with a Bates stamp</p> <p>5 ending in 34340, and ends -- I apologize, this is a</p> <p>6 native document, so that's the -- that's the Bates</p> <p>7 stamp. I believe it's a PowerPoint presentation.</p> <p>8 Sir, are you familiar with this document?</p> <p>9 A. I -- I need to look through it. I mean,</p> <p>10 just looking at it.</p> <p>11 Q. Well, sir, on the last page -- if I could</p> <p>12 direct your attention to the last page, it states:</p> <p>13 POM Alert Guide brought to you by Dena McClamroch --</p> <p>14 I'm messing up her name. It's Dena McClamroch? Is</p> <p>15 that how you pronounce that?</p> <p>16 MR. MAZZA: McClamroch.</p> <p>17 Q. McClamroch and Jeff Abernathy. Do you see</p> <p>18 that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Does that refresh your recollection?</p> <p>21 A. No, sir.</p> <p>22 Q. So as you sit here today, you have no</p> <p>23 recollection of preparing this document?</p> <p>24 A. As I sit right here today, I don't. I</p> <p>25 mean...</p>

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1 Q. Well, why don't you take a minute to review  
2 it, then, but we'll have some questions on it. Have  
3 you had a chance to review the document, sir? Are  
4 you still looking?  
5 A. Yes, sir.  
6 Q. What does POM stand for?  
7 A. Pharmacy order monitoring.  
8 Q. And this document is titled Health &  
9 Wellness Pharmacy Order Monitoring Alerts Guide. Do  
10 you see that?  
11 A. Yes, sir.  
12 Q. And it's dated 3/31/2016?  
13 A. Yes, sir.  
14 Q. Do you have any recollection as to why you  
15 prepared this document?  
16 A. I don't know why I prepared it.  
17 Q. Do you, as you sit here today, have any  
18 knowledge as to what process or procedure is  
19 reflected in this document?  
20 A. I mean, it looks like the steps that were  
21 taken for the Reddwerks order alerting, and then it  
22 moves into the pharmacy order monitoring process at  
23 the home office.  
24 Q. Sir, if you could turn to -- and I  
25 apologize, the document doesn't have page numbers,

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1 but the fifth page in the document?  
2 MR. MAZZA: Including the title page?  
3 MR. BOWER: Yeah. It has -- should have  
4 DC/POM at the top.  
5 MR. MAZZA: Say that again.  
6 MR. INNES: Fourth page.  
7 MR. BOWER: Sorry, fourth page?  
8 MR. MAZZA: DC/POM?  
9 MR. BOWER: Yeah. Sorry, I had a cover page  
10 on mine. I apologize.  
11 BY MR. BOWER:  
12 Q. Do you see that? Are you on that page, sir?  
13 A. Yes, sir.  
14 Q. And that page, the first bullet point says:  
15 How an order moves through the review process.  
16 Do you see that?  
17 A. Yes, sir.  
18 Q. Okay. So the DC action, if you go on the  
19 left, you have the arrow over the order.  
20 Do you see that, sir?  
21 A. Yes, sir.  
22 Q. And then: DC action needed, review flagged  
23 orders.  
24 Do you see that?  
25 A. Yes, sir.

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1 Q. So is it -- is it your recollection that  
2 even during -- even as of March 31st, 2016, the DC  
3 was responsible for reviewing flagged orders?  
4 A. Yes, sir.  
5 Q. Okay. And who at DC6045 was responsible for  
6 doing that in March 2016?  
7 A. It would have been one of the operations  
8 managers there. I believe at this time, I had moved  
9 to the home office as part of the pharmacy  
10 operation -- Pharmacy Order Monitoring Team, so one  
11 of the ops managers would have done that.  
12 Q. And if you look at the first dash under the  
13 bullet point, it says: An order is alerted as being  
14 over the weekly threshold.  
15 Do you see that?  
16 THE COURT REPORTER: Can you say it again?  
17 MR. BOWER: Sure.  
18 Q. An order is alerted as being over the weekly  
19 threshold.  
20 Do you see that, sir, right under the first  
21 bullet point there at the top?  
22 A. Oh.  
23 Q. Sorry about that.  
24 A. Okay.  
25 Q. Did Walmart at some point change its numeric

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1 thresholds from daily to weekly?  
2 A. I believe at some point we did look at a  
3 weekly total.  
4 Q. Well, was this a policy in place in March  
5 2016?  
6 A. I believe so.  
7 Q. All right, sir. At this point, you were at  
8 the home office, so you were -- had some  
9 responsibility for implementing the policy, correct?  
10 A. I don't understand.  
11 Q. Well, let me -- let me ask it a different  
12 way.  
13 What were your responsibilities with respect  
14 to the monitoring of suspicious orders in March of  
15 2016?  
16 A. So once the orders showed up at the DC, and  
17 they hit the button to send it to the home office,  
18 then that's when I would review those orders.  
19 Q. And during this time period were you  
20 responsible for reviewing the orders from DC6045?  
21 A. On some days. It wasn't my primary  
22 responsibility every day.  
23 Q. And other than yourself, who else had that  
24 responsibility?  
25 A. Dena McClamroch. She was on the team, so

<p style="text-align: right;">Page 218</p> <p>1 her and I did those in the beginning. There was,  2 like -- there was a guy that was there. His name  3 was Justin, but he wasn't there very long after I  4 got there. So for a majority of the time, it was  5 Dena and I.  6 Q. Oh, is that Justin Rafiee?  7 A. Yes, sir.  8 Q. And during this time period, how would you  9 determine whether it would be Dena or you or Justin  10 to review the orders from 6045?  11 A. We would alternate the DCs amongst ourself.  12 It was just a -- so on Mondays, you will do these  13 DCs. On Tuesdays, you'll do these DCs. And we just  14 rotated those out.  15 Q. And what criteria would you use to review  16 the orders that were alerted from 6045?  17 A. Let's see. Some that I can think of right  18 off the top of my head was we would look at -- my  19 mind went blank.  20 We would look at -- let's see. I would go  21 back into Archer, which is the application we keyed  22 notes and those types of things into. One of the  23 things I would do is look to see had that flag --  24 store flagged before, what -- how many times had it  25 flagged.</p>	<p style="text-align: right;">Page 220</p> <p>1 2016?  2 A. That there was a -- according to the TV,  3 that there was an epidemic.  4 Q. No one at Walmart was discussing it at this  5 time?  6 A. We -- I don't know discussing it. We were  7 definitely trying to make sure that we were  8 following the policies and procedures and monitor  9 those.  10 Q. Sir, while you were at the home office in  11 2016, did you have any written policies or  12 procedures that you referenced when reviewing a  13 suspicious order to determine whether it should be  14 cut?  15 A. We had some policies and procedures. I  16 don't know that I referenced them every time I had a  17 review. I just -- there was a, you know, work  18 process. Here's what you do. Here's tools you have  19 available to research that, and --  20 Q. Is that process reflected in this document?  21 If you go two pages further, it has some with -- the  22 page with the title HO Action Needed.  23 Did you see that?  24 A. Yes, sir.  25 Q. Were you a member of the POM Team?</p>
<p style="text-align: right;">Page 219</p> <p>1 I would go back and run a query to find out,  2 you know, how many bottles it had ordered over a  3 four-week period and a twelve-week period. I  4 would -- I would call the store, talk to the  5 pharmacy manager.  6 Those are some of the things that we did to  7 review the orders.  8 Q. Anything else that you can recall that you  9 did to review the orders?  10 A. Right off the top of my head, that's what  11 comes to mind.  12 Q. Sir, you were one of the three people at  13 Walmart -- Walmart home office to review Schedule II  14 narcotics for the entire country, correct?  15 A. Yes.  16 Q. You were reviewing the suspicious orders for  17 opioids, right?  18 A. For controlled drugs, yes.  19 Q. Including the opioid -- opioids that were  20 leading to the nationwide epidemic, correct?  21 A. Yes.  22 Q. At this point, were you aware of the  23 epidemic, sir?  24 A. I knew that there was an issue, yes, sir.  25 Q. What was your understanding of the issue in</p>	<p style="text-align: right;">Page 221</p> <p>1 A. Yes, sir.  2 Q. Who were -- who were the other members of  3 the team in 2016?  4 A. Dena McClamroch and Justin. I can't  5 pronounce his last name, but he was there.  6 Q. And it was just you three on the POM Team?  7 A. Yes.  8 Q. When was that team formed?  9 A. I don't -- I don't know when it was formed.  10 I came to it about March of 2016.  11 Q. Was the team already in existence when you  12 came to it?  13 A. Yes, sir.  14 Q. And were those other two individuals already  15 on the team?  16 A. Yes, sir.  17 Q. Did you replace anybody?  18 A. No, sir.  19 Q. So you mentioned one of the things you would  20 do would -- check Archer to determine whether this  21 store had been flagged in the past, correct?  22 A. Yes, sir.  23 Q. What does that mean, whether a store -- a  24 store had been flagged?  25 A. So we would key every -- for all the stores</p>

<p style="text-align: right;">Page 222</p> <p>1 that were flagged, we would go into an application  2 called Archer, and we would key in specific things  3 that -- Archer, you know, asked for information. We  4 would key that in so that -- to let the store -- or  5 to put in there what we did with that flagged order  6 and what the outcome was, those types of things,  7 just notes about orders that were flagged.  8 Q. So let me -- let me try to ask it a  9 different way. What does it mean when a store is  10 flagged?  11 A. So in the -- in the Reddwerks system,  12 thresholds were set. Once the store exceeded that  13 threshold, it flagged in the Reddwerks system.  14 Q. So what do you mean by exceeded the  15 threshold? Are you talking about something other  16 than oxy-30 orders over 20?  17 A. Yes. Whatever thresholds that they set in  18 Reddwerks for that to flag, for each store, for each  19 item.  20 Q. Other than over 50 orders, and the over  21 30 -- over 20 orders for oxy-30, were there any  22 other thresholds that would cause a store to be  23 flagged?  24 A. I don't know. I mean, I didn't set any  25 thresholds.</p>	<p style="text-align: right;">Page 224</p> <p>1 A. I knew it was over whatever the threshold  2 was, so I knew it was over a quantity amount.  3 Q. And when did -- when did Walmart start  4 flagging orders in -- strike that.  5 When did Walmart start flagging stores in  6 Archer?  7 A. I don't know -- we didn't flag stores in  8 Archer. It was just a -- it was just an application  9 that was used that we would enter information into.  10 Q. Well, sir, you went into Archer to determine  11 whether a store was flagged, correct?  12 A. I went into Archer to find out -- for a  13 store that had been flagged today, I would go back  14 and look to say, oh, well, it flagged last week or  15 the week before or two days ago. How many times had  16 it flagged. That's what I was going back into  17 Archer to look --  18 Q. And when --  19 A. -- history.  20 Q. -- did Walmart start flagging stores for  21 exceeding the thresholds?  22 A. Whenever we rolled out the Reddwerks, the  23 automated Reddwerks system.  24 Q. Well, we've looked at that, and that was  25 late two thousand -- I mean, strike that.</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. Well, sir, you were one of the three people  2 for all of Walmart to review suspicious orders,  3 correct?  4 A. I reviewed the orders that were flagged and  5 sent to me.  6 Q. And you don't even know under what  7 circumstances a store would be flagged?  8 A. It was flagged based on the store item and  9 quantity. That's -- that's what I knew.  10 Q. But you don't know what items would cause a  11 store to be flagged, correct?  12 MR. MAZZA: Objection; form.  13 Q. Well, let me ask a different way. Do you  14 know what items would cause a store to be flagged?  15 A. What items?  16 Q. Just using your words, sir.  17 A. So a store would flag if it went over a  18 threshold that the system had set. So it would say,  19 hey, this is over the threshold. You need to review  20 it.  21 Q. But you don't know what the threshold was,  22 do you?  23 A. I don't know what the threshold was.  24 Q. So you don't know why any particular store  25 was flagged, do you?</p>	<p style="text-align: right;">Page 225</p> <p>1 That was sometime in 2015, correct?  2 A. Yes, sir.  3 Q. So in your responsibilities in reviewing  4 suspicious orders for Walmart, you could only go  5 back a year to see whether that store had exceeded  6 its threshold; is that correct?  7 A. I mean, yes, sir. I mean, that's what was  8 in Archer.  9 Q. Did you have any concerns that the store may  10 have been ordering too much for that entire year?  11 Did you ever go -- ask to go back further?  12 A. No.  13 Q. Well, we were already epidemic proportions,  14 right, sir? The country is already in the middle of  15 an epidemic, right? And you are comparing orders  16 that were already part of the epidemic, correct?  17 MR. MAZZA: Objection; form.  18 A. I was reviewing orders following the  19 guidelines, the training, the policy and procedures  20 that were given to me inside that format.  21 Q. Other than reviewing -- strike that.  22 Other than looking at whether a store had  23 been flagged and how many times it had been  24 flagged -- strike that one. I apologize.  25 In your capacity and responsibility for</p>

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1 reviewing flagged orders, how would you determine  
2 whether a store's history impacted whether to cut or  
3 suspend an order?

4 A. It wasn't just history alone that would  
5 cause me to cut or approve, or whatever, an order.  
6 There were several factors that we looked at. It  
7 wasn't all based on just one factor.

8 Q. But did you have the sole discretion to make  
9 that decision?

10 A. Following the guidelines given to me, yes,  
11 but I also had the discretion that if I didn't feel  
12 comfortable with that, I could send that on to our  
13 Compliance Team for them to review.

14 Q. And how often would you send it on to the  
15 Compliance Team?

16 A. I don't know a number. I mean, I did send  
17 some to the Compliance Team for review.

18 Q. Approximately how many?

19 A. In the year I was there, for C2s?

20 Q. Yes.

21 A. Approximately 15 to 20. I mean, I -- that's  
22 the best of my recollection -- recollection.

23 Q. 15 to 20 orders?

24 A. I think so.

25 Q. And approximately how many C2 orders did you

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1 review while you were at the home office?

2 A. I don't know.

3 Q. In the hundreds, correct?

4 A. I don't know.

5 Q. Could have been in the thousands?

6 A. Again, I don't know.

7 Q. Could it have been tens of thousands?

8 A. I don't know.

9 Q. Were there written criteria that you were  
10 supposed to use to determine whether to cut or  
11 suspend an order?

12 A. There were -- there were guidelines and  
13 policies and procedures set out there for that,  
14 so --

15 Q. Did those guidelines have a name?

16 A. I mean, I don't know a name for it. I  
17 wouldn't know the name for it. It's just that's --  
18 we just -- I knew we had some, but I don't know what  
19 it was called.

20 Q. Do you know whether they produced -- have  
21 been produced in this case?

22 A. I don't know.

23 Q. Have you been asked for them in connection  
24 with this litigation?

25 A. No, sir.

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1 Q. Have you seen the document request that went  
2 to Walmart in this case?

3 A. No, sir.

4 Q. Has anyone asked you whether you have  
5 documents that are relevant to this case?

6 MR. MAZZA: I'm going to -- I'm going to  
7 caution the witness not to disclose any  
8 communications he had with counsel.

9 MR. BOWER: Well, that's a yes-or-no  
10 question. He can answer that question.

11 MR. MAZZA: Let's see what the question is.  
12 To the extent you had communications with  
13 counsel, I'm going to instruct you not to answer.

14 MR. BOWER: Just for the record, the  
15 question is: Has anyone asked you whether you  
16 have documents that are relevant to this case?  
17 And that's the question you're instructing him  
18 not to answer.

19 MR. MAZZA: I'm cautioning him. I  
20 understand it's a "yes" or "no." So you can  
21 answer the question "yes" or "no."

22 THE WITNESS: Can you repeat the question?  
23 (The question was read by the reporter.)

24 A. No.

25 BY MR. BOWER:

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1 Q. Sir, going back to your PowerPoint, back to  
2 the page that has DC/POM for a moment, are you still  
3 on that page?

4 A. Yes, sir.

5 Q. Sir, on the second dash there, it says: It  
6 appears in DC action needed - flagged order so that  
7 the DC can review the order and either release the  
8 order to be picked, cut the order, or send to HO for  
9 further -- for further review.

10 Do you see that?

11 A. Yes, sir.

12 Q. Then it says: If released to be picked or  
13 cut by the DC, no further action is needed.

14 Fair?

15 A. Yes.

16 Q. Does it say anywhere in this policy, sir, or  
17 are you aware of any policy that would require the  
18 DC to report that to the DEA?

19 A. I don't -- I don't see anything here that  
20 says that.

21 Q. Did Walmart have such a policy?

22 A. I'm sure we did.

23 Q. If the DC -- if the DC themselves cut the  
24 order, how would that order -- that order that was  
25 cut get to the DEA?



<p style="text-align: right;">Page 230</p> <p>1 A. I don't know.</p> <p>2 Q. Have you ever seen such a correspondence?</p> <p>3 A. No, sir.</p> <p>4 MR. MAZZA: Objection; form.</p> <p>5 Q. Sir, in your capacity and responsibility to</p> <p>6 review orders at the home office, did you consider,</p> <p>7 in determining whether to approve or cut the order,</p> <p>8 what product was being ordered?</p> <p>9 A. No, sir.</p> <p>10 Q. It didn't matter whether it was an oxy-30.</p> <p>11 A. No, sir. I mean, I reviewed all the orders</p> <p>12 the same.</p> <p>13 Q. Did you review oxy-80s the same as oxy-5s?</p> <p>14 A. I don't remember an oxy-80, but, I mean, I</p> <p>15 would have reviewed both of them the same.</p> <p>16 Q. Would you've reviewed fentanyl the same as</p> <p>17 OxyContin?</p> <p>18 A. Well, we didn't sell OxyContin during this</p> <p>19 time, but I would have reviewed it the same way.</p> <p>20 Q. What do you mean when you say, we didn't</p> <p>21 sell OxyContin during this time?</p> <p>22 A. OxyContin is a brand name. We distributed</p> <p>23 oxycodone.</p> <p>24 Q. Okay. So did you sell oxycodone during this</p> <p>25 time period?</p>	<p style="text-align: right;">Page 232</p> <p>1 order, send it to the home office for review.</p> <p>2 Q. So at some point in and around January 2015,</p> <p>3 Walmart stopped cutting any orders of oxy-30 above</p> <p>4 20; is that correct?</p> <p>5 A. I don't know the exact date, but we did stop</p> <p>6 doing that.</p> <p>7 Q. Do you have any understanding as to why that</p> <p>8 policy was changed?</p> <p>9 A. It was my understanding because we were</p> <p>10 using the new Reddwerks system.</p> <p>11 Q. So the new Reddwerks system was the system</p> <p>12 set up to simply flag oxy-30 orders that exceeded</p> <p>13 20?</p> <p>14 A. It would flag based on the threshold that</p> <p>15 they set for it.</p> <p>16 Q. Do you know who set those thresholds?</p> <p>17 A. I don't know who set those thresholds.</p> <p>18 Q. Do you know what team or division within</p> <p>19 Walmart was responsible for that?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you know who would know?</p> <p>22 A. I don't know that.</p> <p>23 Q. Were you able to see the thresholds in</p> <p>24 Reddwerks?</p> <p>25 A. I don't think I was able to see them in --</p>
<p style="text-align: right;">Page 231</p> <p>1 A. Yes.</p> <p>2 Q. And did you review oxycodone products any</p> <p>3 differently than any other opioid product?</p> <p>4 A. No, sir. I evaluated them all the same.</p> <p>5 Q. Is that part of Walmart's policy, to</p> <p>6 evaluate them all the same?</p> <p>7 A. To follow the guidelines and procedures set</p> <p>8 before me is what I did, yes, sir.</p> <p>9 Q. Right. Was part of those guidelines and</p> <p>10 procedures to treat all the products the same?</p> <p>11 A. Yes.</p> <p>12 Q. Unless it's an oxy-30, correct?</p> <p>13 A. During this time period?</p> <p>14 MR. MAZZA: Objection as to form.</p> <p>15 Q. Yes, sir, during this time period. Were</p> <p>16 oxy-30s still being cut automatically if they</p> <p>17 exceeded the threshold of more than 20?</p> <p>18 A. No, sir.</p> <p>19 Q. When did that stop?</p> <p>20 A. Once we moved into the new Reddwerks</p> <p>21 automated system, then we allowed for that process</p> <p>22 to work.</p> <p>23 Q. Was part of that Reddwerks process</p> <p>24 automatically cutting oxy-30s to 20?</p> <p>25 A. No. The process was to, if it was a flagged</p>	<p style="text-align: right;">Page 233</p> <p>1 from the DC side. I believe when I was reviewing</p> <p>2 the orders at the home office I was able to see</p> <p>3 those, but I'm not sure if it was in Reddwerks.</p> <p>4 Q. Where else may it have been?</p> <p>5 A. I believe it was in Reddwerks, but</p> <p>6 understand that once -- you know, there was a</p> <p>7 different -- for the people at the home office who</p> <p>8 were reviewing those orders in Reddwerks, there was</p> <p>9 a different -- like, it would allow us from the home</p> <p>10 office to see that in the same Reddwerks,</p> <p>11 application, but the people from the DC couldn't see</p> <p>12 that.</p> <p>13 I know that may not make sense, but it was</p> <p>14 a -- it was a level that I had, as a home office POM</p> <p>15 person, that I could see the threshold when it would</p> <p>16 flag and they sent it to us. But on the DC side, I</p> <p>17 don't think they could see that on their side. They</p> <p>18 didn't know what that was.</p> <p>19 Q. And you were in your position at the home</p> <p>20 office through 2016?</p> <p>21 A. 2016 to 2017.</p> <p>22 Q. Do you recall what time period in 2017 you</p> <p>23 returned to the DC?</p> <p>24 A. I think May.</p> <p>25 MR. MAZZA: Zach, if we're going to go back</p>

<p style="text-align: right;">Page 234</p> <p>1 to the DC, now might be a good time to take a --</p> <p>2 MR. BOWER: Let's just do a little bit</p> <p>3 longer.</p> <p>4 MR. MAZZA: Yeah.</p> <p>5 MR. BOWER: A couple more before I go back</p> <p>6 to the DC.</p> <p>7 MR. MAZZA: Are you okay with that?</p> <p>8 THE WITNESS: I'm fine.</p> <p>9 BY MR. BOWER:</p> <p>10 Q. Do you want a break? We can take a break</p> <p>11 if --</p> <p>12 A. No, sir. I'm fine.</p> <p>13 Q. Okay.</p> <p>14 (Abernathy Exhibit 23 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. BOWER:</p> <p>17 Q. Sir, you've been handed what's been marked</p> <p>18 Exhibit 23, which is an e-mail from Austin Campbell</p> <p>19 to yourself and Dena McClamroch ending in 8070.</p> <p>20 It's just a one-sentence e-mail with an attachment,</p> <p>21 so just take a moment to review, and then I have a</p> <p>22 few questions on it.</p> <p>23 A. Okay.</p> <p>24 MR. MAZZA: Hey, Zach, just looking at the</p> <p>25 native, the printout portion of it --</p>	<p style="text-align: right;">Page 236</p> <p>1 Compliance Team?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And he -- did you have access to this sort</p> <p>4 of information at the home office?</p> <p>5 A. No, sir.</p> <p>6 Q. Okay. So it appears to you that this</p> <p>7 information is not coming from Reddwerks; is that</p> <p>8 correct?</p> <p>9 A. I'm sorry?</p> <p>10 Q. Is it -- I just want to clarify that it</p> <p>11 appears to you that this information was not pulled</p> <p>12 from Reddwerks; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you have any idea what database this may</p> <p>15 have been pulled from?</p> <p>16 A. No, sir.</p> <p>17 Q. Do you have any recollection as to why he</p> <p>18 was sending -- sending this to you and Dena in</p> <p>19 January of 2017?</p> <p>20 A. To the -- to the best of -- that I can</p> <p>21 remember, it looks like that -- it looked like there</p> <p>22 was a product switch from one brand to another, and</p> <p>23 he was giving us the updated thresholds for the new</p> <p>24 item for us to use in our research.</p> <p>25 Q. And, sir, based on your role at the home</p>
<p style="text-align: right;">Page 235</p> <p>1 MR. BOWER: Yeah.</p> <p>2 MR. MAZZA: -- in the -- I think it's the</p> <p>3 second column, the item description, it's cut</p> <p>4 off. I'm sure we all have the same copy, but</p> <p>5 what I'm looking at is cut off where you can't</p> <p>6 see what oxy product we're talking about.</p> <p>7 MR. BOWER: Right.</p> <p>8 MR. MAZZA: Okay.</p> <p>9 MR. BOWER: Yeah. I mean, I don't think</p> <p>10 that's critical. We can certainly correct that,</p> <p>11 but I don't think -- I'm not going to be</p> <p>12 questioning on that.</p> <p>13 MR. MAZZA: Okay. I just want to confirm.</p> <p>14 MR. BOWER: Yeah. And I think that's right.</p> <p>15 You know, these are Excel spreadsheets. I didn't</p> <p>16 want to make it too large. I just wanted to fit</p> <p>17 it on a few pages. My questions are simply going</p> <p>18 to be focused on the bottle threshold, which you</p> <p>19 can see.</p> <p>20 BY MR. BOWER:</p> <p>21 Q. And, sir, just my main question is: What --</p> <p>22 where is this document's attachment coming from? Is</p> <p>23 this coming from Reddwerks?</p> <p>24 A. This is coming from the Compliance Team.</p> <p>25 Q. So Austin Campbell was part of the</p>	<p style="text-align: right;">Page 237</p> <p>1 office, why would a product switch from one brand to</p> <p>2 another impact the thresholds?</p> <p>3 A. So the thresholds were set up based on a</p> <p>4 history and, you know, an item. And the way it was</p> <p>5 set up was that, you know, if the store had never</p> <p>6 ordered the new item, the threshold would be low</p> <p>7 because they've never had that item before.</p> <p>8 So the Compliance Team would give us the new</p> <p>9 thresholds so that if an item was flagged, before</p> <p>10 this information got put into the system to update</p> <p>11 the thresholds, we would know that that item flagged</p> <p>12 because it had a lower threshold because that item</p> <p>13 had never been ordered before, so it was low.</p> <p>14 So here are the new guidelines that are</p> <p>15 going to be -- for Store 1, the new threshold for</p> <p>16 this item will be 20. So we may have an order that</p> <p>17 flagged, but it may be under 20 because the old --</p> <p>18 the threshold of the new item had not been</p> <p>19 corrected.</p> <p>20 Q. So were the thresholds, at least in part,</p> <p>21 impacted by the amount of the item previously</p> <p>22 ordered by that store?</p> <p>23 A. I believe they were based on a history, but,</p> <p>24 the -- I don't know the specifics of it.</p> <p>25 Q. So it's your understanding that if the store</p>

<p style="text-align: right;">Page 238</p> <p>1 had routinely ordered, say, 40 bottles per month of  2 product, that its threshold would reflect that  3 ordering history, correct?  4 A. I don't know that.  5 Q. You don't know that. One way or the other?  6 A. I don't -- I don't -- I don't know how it  7 set those thresholds.  8 Q. And I'm asking you whether a store's  9 ordering history impacted the threshold level that  10 was applicable to any store.  11 A. I don't know that it impacted it. I know  12 that they looked at that, but I don't know how they  13 used that or how it would impact it.  14 Q. Well, sir, did you look at that in  15 determining whether to approve or cut an order?  16 A. I looked at their history as far as what  17 they've ordered, yes.  18 Q. And, sir, if a store had ordered more in the  19 past, you would be more likely to allow it to order  20 more in the future, correct?  21 A. Based on the procedure and the process we  22 had in place, again, that wasn't the only thing that  23 determined whether I -- or what I did with that  24 order. It wasn't just what their history was.  25 Q. It was also whether they had been flagged,</p>	<p style="text-align: right;">Page 240</p> <p>1 pretty low. So it would cause it to flag because of  2 that. So, I mean, that was a pattern that I could  3 see.  4 Q. And in your review for patterns, was there  5 any criteria you used, or you just simply looked for  6 yourself whether there was a pattern?  7 A. I mean, I don't know that anyone spelled out  8 this is what a pattern looks like. I mean, I was  9 just looking for pattern.  10 Q. And this is another example of a liquid  11 hydro pattern you saw, sir?  12 A. I believe it was a liquid hydro.  13 Q. And when you called the pharmacy, you would  14 have had to document that call, correct, in the  15 system?  16 A. I would have documented it in Archer.  17 Q. Archer requires you to document it, correct?  18 A. Sure.  19 Q. Would you have also verified the  20 pharmacist's representation that, in fact, there was  21 this nursing home that made the orders?  22 A. I didn't -- no, I wouldn't verify that.  23 Q. That wasn't part of the process?  24 A. No, sir.  25 Q. You would take the pharmacist's word for it,</p>
<p style="text-align: right;">Page 239</p> <p>1 correct?  2 A. How many times they had been flagged.  3 Again, I was -- I was going back and looking at  4 size, pattern, and frequency. I was looking at all  5 of those things.  6 Q. What patterns were you looking for?  7 A. I was looking to see if they flagged, when  8 they flagged, was there a pattern there. I do  9 remember a store that had a liquid hydro that  10 would -- it was, like, the first three days of the  11 month, like a 1st or a 3rd, it would spike. And  12 then you wouldn't see it alert again until the next  13 month, and it would spike. And it was, you know,  14 for quite a few bottles.  15 Well, when I called the pharmacy and asked  16 them about it, going back and looking at all the  17 other things, talking to the pharmacy manager, they  18 had a nursing home that they filled their  19 prescriptions. And those prescriptions renewed at  20 the first of every month, so they had a big order at  21 the first of every month for that item.  22 So they had to place an order for what they  23 knew they were going to have to sell for that -- for  24 that nursing home. So it would be above the  25 threshold, because the rest of the months it was</p>	<p style="text-align: right;">Page 241</p> <p>1 correct?  2 A. I mean, it didn't seem out of the norm, so,  3 yeah.  4 Q. And what do you mean, it didn't seem out of  5 the norm?  6 A. It's --  7 Q. Had you talked to other pharmacists who had  8 experienced the same issue?  9 A. No, but, I mean, I had seen a pattern with  10 that one, so --  11 Q. And the explanation sounded reasonable to  12 you, correct?  13 A. Yes, sir.  14 Q. So you approved those orders going forward,  15 right?  16 A. Yes, sir.  17 Q. Sir, who did you report to when you were at  18 the home office?  19 A. Chad Ducote.  20 Q. Did he hire you to come over to the home  21 office?  22 A. Yes, sir.  23 Q. Is that -- was that a position you applied  24 for?  25 A. Yes, sir.</p>

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1 Q. Do you know why you returned to the DC?

2 A. Well, I understood that we were going to

3 move to a -- to a new order monitoring system with

4 Buzzco. And I knew that they were working on

5 getting that in place, and that that process was

6 going to move over to the Compliance Team. During

7 that time, the position that I held at the DC came

8 available, so I just put in an application to move

9 back to the DC.

10 Q. You applied to move back to the DC?

11 A. Yes, sir.

12 Q. When did you submit that application?

13 A. I think around March, April sometime.

14 MR. MAZZA: Let's take that break before we

15 do the next document.

16 MR. BOWER: Can we just do -- I mean, we're

17 taking a lot of breaks.

18 MR. MAZZA: We've got one hour to go, so --

19 actually, now we have less than an hour to go.

20 And so I thought we'd take a break now and then

21 finish the hour. So let's take a break before we

22 do that document.

23 MR. BOWER: I don't know if it's -- we can

24 go off the record.

25 THE VIDEOGRAPHER: Going off the record, the

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1 time is 5:20.

2 (Recess from 5:20 p.m. until 5:34 p.m.)

3 THE VIDEOGRAPHER: We're going back on the

4 record, beginning of Media File Number 7. The

5 time is 5:34.

6 (Abernathy Exhibit 25 was marked for

7 identification.)

8 BY MR. BOWER:

9 Q. Sir, you've been handed what's been marked

10 Exhibit 5 -- I'm sorry, 25.

11 MR. MAZZA: I think it should be 24.

12 MR. BOWER: Yeah, 24 will be coming.

13 MR. MAZZA: Oh, this is 25.

14 MR. BOWER: But I have 24 marked already.

15 BY MR. BOWER:

16 Q. Sir, do you recall receiving this e-mail?

17 A. I mean, I don't recall it.

18 Q. Well, it's a pretty big deal in your world,

19 no, sir?

20 MR. MAZZA: Objection; form.

21 A. I don't -- I don't know. I mean, I don't

22 understand "big deal." I don't know what you mean.

23 Q. Well, sir, your primary job responsibility

24 was suspicious order monitoring, correct?

25 A. Yes.

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1 Q. And you're --

2 MR. MAZZA: Counsel, can you give him time

3 to read the document?

4 MR. BOWER: Well, sir, I think I've been

5 more than gracious concerning the documents.

6 This is a one-sentence e-mail, right? He's

7 had -- I offered him all day plenty of time to

8 review documents. This is a one sentence e-mail.

9 MR. MAZZA: This is a three-page e-mail.

10 MR. BOWER: It's a -- it's a one-sentence

11 e-mail attaching a USDA press release regarding

12 McKesson's \$150 million fine, and he's already

13 testified it wasn't a big deal to him.

14 BY MR. BOWER:

15 Q. So, sir, if you want to take a minute, go

16 ahead and read the document.

17 MR. MAZZA: I think that misstates the

18 record. Yeah, he said, I don't recall it.

19 And for the record, you have been gracious

20 in letting him read the documents. That is

21 absolutely true.

22 Q. Are you done, sir?

23 A. Yes, sir.

24 Q. Did you receive tons of questions after this

25 settlement, the McKesson settlement with the DEA?

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1 A. I don't remember any questions.

2 Q. Do you remember being concerned at all about

3 it?

4 A. I mean, I just remember, you know, the

5 e-mail coming out, and, you know, I do remember Brad

6 saying, hey, there may be questions about this,

7 so --

8 Q. Is this the first time you had seen this,

9 when you got this e-mail?

10 A. I mean --

11 Q. He says: Just FYI in case you had not seen

12 this yet. Right?

13 A. Right.

14 Q. You hadn't seen this yet?

15 A. I hadn't seen it.

16 Q. It's not something you followed in the news?

17 A. No, sir.

18 Q. Walmart had -- was doing business with

19 McKesson at the time, right? Its pharmacies were

20 ordering from McKesson, right?

21 A. Yes, sir.

22 Q. And just ask you one question and then in

23 the press release itself, all right, and the

24 paragraph starting "in 2008," first page of the

25 release.

<p style="text-align: right;">Page 246</p> <p>1 Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Last sentence of that paragraph says: From</p> <p>4 2008 until 2013, McKesson supplied various US</p> <p>5 pharmacies an increasing amount of oxycodone and</p> <p>6 hydrocodone pills. Frequently misused products are</p> <p>7 part of the current epidemic.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. So did you have any concerns that Walmart</p> <p>11 had also supplied various US pharmacies, from 2008</p> <p>12 to 2013, increasing amounts of oxycodone and</p> <p>13 hydrocodone pills?</p> <p>14 A. I'm sorry, ask that again.</p> <p>15 (The question was read by the reporter.)</p> <p>16 A. I followed the practices and the policies</p> <p>17 and the procedures given to me, the guidelines given</p> <p>18 to me. So because of that, I felt that what we sent</p> <p>19 to the stores was okay, I mean, because I was</p> <p>20 following what was given to me, if that's what</p> <p>21 you're asking.</p> <p>22 Q. No, sir. So the question is: Did you have</p> <p>23 any concerns yourself personally that Walmart had</p> <p>24 also been supplying its pharmacies with an</p> <p>25 increasing amount of oxycodone and hydrocodone</p>	<p style="text-align: right;">Page 248</p> <p>1 review it, and it's just a cover e-mail with a</p> <p>2 flowchart attached.</p> <p>3 Do you see that, sir?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And this was received by yourself during the</p> <p>6 time you were at the home office, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Sir, do you know whether this -- the flow --</p> <p>9 and please take your time to review it. I'll just</p> <p>10 tell you my first question is whether this process</p> <p>11 that's illustrated here was implemented in</p> <p>12 connection with Walmart's suspicious order</p> <p>13 monitoring program in 2006 or at any time</p> <p>14 thereafter.</p> <p>15 MR. MAZZA: I'll just offer, for the record,</p> <p>16 some of the type in the black boxes, at least on</p> <p>17 the top, I don't think you can make it out, on</p> <p>18 the second page.</p> <p>19 MR. BOWER: So the first black box on the</p> <p>20 top says: Control drug. And the second black</p> <p>21 box says: Review information about the drug and</p> <p>22 what it is used for.</p> <p>23 MR. MAZZA: What it was used for.</p> <p>24 MR. BOWER: Okay?</p> <p>25 BY MR. BOWER:</p>
<p style="text-align: right;">Page 247</p> <p>1 starting in 2008? Did you have that concern?</p> <p>2 A. I didn't have a concern about an increasing</p> <p>3 amount because I don't know increasing -- I don't --</p> <p>4 I mean, I didn't think in those terms of that.</p> <p>5 Q. You never looked at it, either, right?</p> <p>6 A. Looked at this document?</p> <p>7 Q. No. You never went back and looked at</p> <p>8 whether Walmart had been increasing its supply of</p> <p>9 these products during this time, did you?</p> <p>10 A. Not overall or as a company or anything like</p> <p>11 that.</p> <p>12 Q. Could you have done that if you wanted to?</p> <p>13 A. I mean, I -- I mean, I don't know if I could</p> <p>14 have or not.</p> <p>15 (Abernathy Exhibit 26 was marked for</p> <p>16 identification.)</p> <p>17 Q. I'm handing you what's been marked as</p> <p>18 Exhibit 26.</p> <p>19 MR. BOWER: I apologize, I only have two</p> <p>20 copies of this one.</p> <p>21 MR. MAZZA: That's all right. Should we</p> <p>22 hold 25, Zach?</p> <p>23 MR. BOWER: We're done with 25.</p> <p>24 BY MR. BOWER:</p> <p>25 Q. And 26, sir, certainly take your time to</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. Do you recognize this process, sir?</p> <p>2 A. Hang on just a second. Okay.</p> <p>3 Q. Do you recognize this process reflected on</p> <p>4 this chart, sir?</p> <p>5 A. I don't recognize the process. I believe --</p> <p>6 going back and thinking about this, I think this was</p> <p>7 something that Justin put together because I had</p> <p>8 just come on the team, and I think he put this</p> <p>9 together to kind of help show me what he does in the</p> <p>10 job.</p> <p>11 So I think this was just an e-mail to me</p> <p>12 saying, hey, I put this together just to show you</p> <p>13 kind of what -- you know, what I do, you know, to</p> <p>14 help you out, so --</p> <p>15 Q. Was Justin doing something different than</p> <p>16 you were brought on to do?</p> <p>17 A. I mean, I don't -- I don't know what he was</p> <p>18 doing. I mean, like I said, I think he was just</p> <p>19 trying to help me get acclimated in the new</p> <p>20 position, and he just sent me this because this is</p> <p>21 what he does.</p> <p>22 Q. And what do you mean when you say this is</p> <p>23 what he does? He implemented this procedure?</p> <p>24 A. I think this is the process flow that he</p> <p>25 operated off of.</p>



<p style="text-align: right;">Page 250</p> <p>1 Q. Okay. So do you know what these terms 2 reference? For example, that first diamond on the 3 left: Send to PC to determine actual threshold. Do 4 you know what that means?</p> <p>5 A. No.</p> <p>6 Q. Do you know what actual -- actual threshold 7 refers to?</p> <p>8 A. I don't.</p> <p>9 Q. Do you know what PC refers to?</p> <p>10 A. I mean, I didn't make the document. I don't 11 know what he meant by PC.</p> <p>12 Q. We'd have to talk with Justin, what he meant 13 by that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know what default threshold refers 16 to?</p> <p>17 A. Again, I don't know what he's referring to.</p> <p>18 Q. What about this reference to the McKesson 19 threshold report? Do you see that? Do you see it, 20 sir? There is a third diamond right on the top row, 21 right under that third diamond, that rectangle 22 there.</p> <p>23 A. Yes.</p> <p>24 Q. It says: Check McKesson threshold report. 25 Do you see that?</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. Right. But during this time period, sir, 2 you were -- you agree you were in charge of 3 approving or cutting orders that were flagged as 4 potentially suspicious, correct?</p> <p>5 A. I was not the only person in charge of doing 6 that. I reviewed the orders, yes.</p> <p>7 Q. You were one of the people to make those 8 decisions, right?</p> <p>9 A. I was one of them, yes.</p> <p>10 Q. Yes. And in making those decisions, did you 11 ever consider whether an item was dual sourced?</p> <p>12 A. Yes.</p> <p>13 Q. You considered that, correct?</p> <p>14 A. I considered -- yes, sir.</p> <p>15 Q. How would you have known whether or not it 16 was dual sourced? Where would you have looked?</p> <p>17 A. Well, my understanding of dual sourced meant 18 that we had two separate vendors that supplied us, 19 so maybe this vendor supplied these stores, and this 20 vendor supplied these stores.</p> <p>21 Q. What do you -- what do you mean when you 22 said you had two separate vendors that supplied us? 23 Do you mean the vendors -- Walmart would purchase 24 the Schedule II narcotics from the manufacturers, 25 correct?</p>
<p style="text-align: right;">Page 251</p> <p>1 A. Yes.</p> <p>2 Q. Do you know what that refers to?</p> <p>3 A. No.</p> <p>4 Q. Sir, in your -- in connection with your 5 duties and responsibilities at the home office to 6 review any of the cut or approved orders, did you 7 ever consider whether the pharmacy had ordered the 8 product from McKesson?</p> <p>9 A. No, sir.</p> <p>10 Q. Did you have access to McKesson's threshold 11 reports?</p> <p>12 A. I don't remember having access to any 13 McKesson threshold reports.</p> <p>14 Q. Do you know what a McKesson threshold report 15 is?</p> <p>16 A. No, sir.</p> <p>17 Q. Do you know what -- if you go -- follow that 18 down, there is the shaded box, and to the left there 19 is another diamond that says: Is the item dual 20 sourced?</p> <p>21 Do you see that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Do you know what that refers to?</p> <p>24 A. Again, since this is what Justin did, I 25 don't know what Justin means by dual sourced.</p>	<p style="text-align: right;">Page 253</p> <p>1 A. Yes, sir.</p> <p>2 Q. And by vendors --</p> <p>3 MR. MAZZA: Objection --</p> <p>4 Q. -- do you mean manufacturers?</p> <p>5 MR. MAZZA: Sorry, interpose to the last 6 question, objection as to form.</p> <p>7 Q. When you say vendors, do you -- are you 8 referring to manufacturers?</p> <p>9 A. Yes.</p> <p>10 Q. So why would it -- why would it have been a 11 factor you considered, whether Walmart acquired 12 product from two different sources in determining 13 whether an order should be cut?</p> <p>14 A. I mean, off the top of my head, I mean, when 15 I would consider that, it would be because if, you 16 know, this vendor was serving -- servicing these 17 stores, but for whatever reason, they couldn't, and 18 they moved the -- moved it to another vendor to 19 service those stores, again, the thresholds would 20 have been different because that wasn't their normal 21 treated item. So that would be the sense in which I 22 would look at that.</p> <p>23 Q. But you never considered whether the item 24 may have been sourced from another distributor, did 25 you?</p>

<p style="text-align: right;">Page 254</p> <p>1 A. No, sir.</p> <p>2 Q. In deciding whether to cut an order, you</p> <p>3 never determined whether a pharmacy may have ordered</p> <p>4 that same product from McKesson, did you?</p> <p>5 A. No, sir.</p> <p>6 Q. And you never determined whether -- you</p> <p>7 never considered whether that pharmacy may have</p> <p>8 ordered that product from AmerisourceBergen, did</p> <p>9 you?</p> <p>10 A. No, sir.</p> <p>11 (Abernathy Exhibit 24 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. BOWER:</p> <p>14 Q. Sir, you've been handed what's been marked</p> <p>15 Exhibit 24. It's an e-mail from Theresa to</p> <p>16 Mr. Ducote, Nick Tallman, Ramona Sullins, Dena</p> <p>17 McClamroch, Kenny King, and yourself, dated February</p> <p>18 10th, 2017.</p> <p>19 Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Bates stamp ending in 1004. Sir, this --</p> <p>22 February 2017, you were still at the home office,</p> <p>23 correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And so I don't have many questions on this,</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. Did they hire someone to replace you?</p> <p>2 A. They did, yes, sir.</p> <p>3 Q. And do you know who they hired?</p> <p>4 A. Lisa. That's all I know. I don't -- I</p> <p>5 don't know who. They just -- I know they were</p> <p>6 interviewing a lady named Lisa.</p> <p>7 Q. And what was the reason you left your</p> <p>8 position at the home office?</p> <p>9 A. There was an opportunity for me to go back</p> <p>10 to the DC, and I had suspected that this position</p> <p>11 was going to go away. That was just my thoughts.</p> <p>12 So while the position was opened at the DC, I</p> <p>13 decided to take that.</p> <p>14 Q. Where did those thoughts come from?</p> <p>15 A. Well, it came from the talking of moving to</p> <p>16 Buzzee, the new order monitoring system, and that --</p> <p>17 there was talk that the Compliance Team would take</p> <p>18 that over, so that process would move to the</p> <p>19 Compliance Team.</p> <p>20 Q. Did that, in fact, occur?</p> <p>21 A. I believe it did occur.</p> <p>22 Q. Do you know when that occurred?</p> <p>23 A. I don't remember the date that that</p> <p>24 occurred. I had come back to the DC when it took</p> <p>25 effect, but I don't remember the date.</p>
<p style="text-align: right;">Page 255</p> <p>1 I just want to focus your attention on the logistics</p> <p>2 update.</p> <p>3 Do you see that? Just on the first page</p> <p>4 there, it's bolded.</p> <p>5 A. Can I read it, please?</p> <p>6 Q. Yeah. I'm just going to -- I'm trying to</p> <p>7 focus your attention where my questions are going to</p> <p>8 be.</p> <p>9 A. Okay.</p> <p>10 Q. It says: Chad conducted second round</p> <p>11 interviews for the SOM position.</p> <p>12 Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Do you know what position that refers to?</p> <p>15 A. I believe it was a -- they were going to put</p> <p>16 another pharmacy order monitoring position in along</p> <p>17 with Dena and I --</p> <p>18 Q. So --</p> <p>19 A. -- essentially replacing Justin.</p> <p>20 Q. So Justin had left by this time period?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And about how far after -- when did you</p> <p>23 leave again, sir?</p> <p>24 A. I believe my last day up there was in May</p> <p>25 sometime.</p>	<p style="text-align: right;">Page 257</p> <p>1 MR. BOWER: All right. Let's go off the</p> <p>2 record for a minute.</p> <p>3 THE VIDEOGRAPHER: Going off the record.</p> <p>4 The time is 5:52.</p> <p>5 (Recess from 5:52 p.m. until 5:57 p.m.)</p> <p>6 THE VIDEOGRAPHER: We're back on record, the</p> <p>7 beginning of Media File Number 8. The time is</p> <p>8 5:57.</p> <p>9 (Abernathy Exhibit 28 was marked for</p> <p>10 identification.)</p> <p>11 BY MR. BOWER:</p> <p>12 Q. Sir, you've been handed what's been marked</p> <p>13 as Exhibit Number 28, which is Walmart's Amended and</p> <p>14 Supplemental Objections and Responses to Plaintiffs'</p> <p>15 First Set of Interrogatories.</p> <p>16 Have you seen those before?</p> <p>17 A. No, sir.</p> <p>18 Q. No, sir. And I just want to use this</p> <p>19 document primarily to refresh your recollection</p> <p>20 about meetings you attend with the DEA. Okay, sir?</p> <p>21 Do you recall attending meetings with the</p> <p>22 DEA regarding suspicious order monitoring?</p> <p>23 A. I don't remember.</p> <p>24 Q. No?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 258</p> <p>1 Q. Okay. Would you turn to Page 19, please?</p> <p>2 You see there the entry for 9/28/17, the</p> <p>3 first one on top?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Walmart employees including David Barlow,</p> <p>6 Matt Singer, Nick Tallman, Brooke Leverett, Mike</p> <p>7 Mullin, Jeff Abernathy, and Ray Roe met with the DEA</p> <p>8 employees.</p> <p>9 Do you see that, sir?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Is that an accurate statement?</p> <p>12 A. Yes. I mean, the date, I believe, is right,</p> <p>13 but -- yes.</p> <p>14 Q. Do you recall what was discussed at the</p> <p>15 meeting, sir?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What was discussed at that meeting on 9/28?</p> <p>18 A. We had set up a meeting with them to discuss</p> <p>19 using the carriers at Warehouse 1, 6001, to deliver</p> <p>20 the C2s to the stores for the area -- for the stores</p> <p>21 that DC6001 serviced.</p> <p>22 Q. And then do you see another meeting about</p> <p>23 halfway down the page, 9/21 through 9/23: Walmart</p> <p>24 employees including Nick Tallman, Mike Mullin,</p> <p>25 yourself, Ramona Sullins, Kristy Spruell, and Sarah</p>	<p style="text-align: right;">Page 260</p> <p>1 types of meetings or presentations where the DEA</p> <p>2 discussed suspicious -- suspicious order monitoring?</p> <p>3 A. No, sir, not that I know of.</p> <p>4 Q. Have you ever attended any conferences or</p> <p>5 any similar -- similar type of meeting where the</p> <p>6 opioid epidemic was discussed?</p> <p>7 A. No, sir, not that I can remember.</p> <p>8 Q. No? Do you see the meeting on 4/30/15, you</p> <p>9 were also present at that meeting?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall what was discussed at that</p> <p>12 meeting?</p> <p>13 A. This was -- so it looks like this was the</p> <p>14 meeting where, once we moved the C2 vault over to</p> <p>15 the new warehouse, they came and inspected it.</p> <p>16 Q. Sir, I'm just going to ask you: The next</p> <p>17 page is a series of meetings in 2008 and '09 where</p> <p>18 Mr. Sherl and Mullin and Ms. Hiland met with the</p> <p>19 DEA. Do you have any recollection what these</p> <p>20 meetings were about?</p> <p>21 A. No, sir.</p> <p>22 MR. MAZZA: I'm sorry, Zach, which entry?</p> <p>23 MR. BOWER: This -- I'm just asking about</p> <p>24 these ones, 2007, 2009, where Jim Sherl, Mike</p> <p>25 Mullin, and Ms. Hiland met with the DEA.</p>
<p style="text-align: right;">Page 259</p> <p>1 Eisler met with DEA employees?</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall that meeting in 2015?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall what was discussed at that</p> <p>7 meeting?</p> <p>8 A. I believe that was an audit that they</p> <p>9 performed. We had just moved the DC -- DC6045, we</p> <p>10 had moved it from Bentonville to Rogers and</p> <p>11 colocated it with the 6001 building just prior to</p> <p>12 this, and I believe this is when they came and did</p> <p>13 an audit.</p> <p>14 Q. Sir, have you ever seen any correspondence</p> <p>15 the DEA has sent to Walmart regarding suspicious</p> <p>16 order monitoring?</p> <p>17 A. No, sir, not to my knowledge.</p> <p>18 Q. At any of these meetings with the DEA did</p> <p>19 they provide you with any documents?</p> <p>20 A. Well, they didn't provide me with any</p> <p>21 documents.</p> <p>22 Q. Did they provide Walmart with any documents,</p> <p>23 to your knowledge?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Have you ever been to any seminars or other</p>	<p style="text-align: right;">Page 261</p> <p>1 Q. And just given your -- the nature of your</p> <p>2 job at 6045, I was just wondering if you have any</p> <p>3 knowledge what those meetings were about. Like, for</p> <p>4 example, the 9/1/2009 meeting was at 6045.</p> <p>5 Do you see that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And you were at 6045 at that time, right?</p> <p>8 A. I was. I know that on two occasions, the</p> <p>9 DEA did come do an audit, but I was on vacation both</p> <p>10 of those times.</p> <p>11 Q. And, sir, if you can turn back to Page 18 --</p> <p>12 strike that.</p> <p>13 (Abernathy Exhibit 27 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. BOWER:</p> <p>16 Q. You might want to keep that out for a</p> <p>17 minute, but let me just go to Exhibit 27.</p> <p>18 MR. BOWER: You know, I need one of those</p> <p>19 back, sorry. Those big ones I only brought --</p> <p>20 MR. MAZZA: This is 27?</p> <p>21 MR. BOWER: 27, yeah.</p> <p>22 BY MR. BOWER:</p> <p>23 Q. Sir, you've been handed what's been marked</p> <p>24 Exhibit 27. It's a lengthy document. The first</p> <p>25 Bates number is 5 -- sorry, 45963, and it ends in</p>

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1 46007.  
2 And I just have a couple of general  
3 questions on this document, sir, but take a moment  
4 just to review -- review the document and the  
5 information in the -- what appears to be a fax to  
6 the DEA.

7 Just -- my first question -- keep reviewing.  
8 I just wanted to know if you recall ever seeing this  
9 document before.

10 A. No, sir.

11 Q. Okay. Do you see the date of the document,  
12 July 23rd, 2010? It's the front page there, sir.

13 A. Okay.

14 Q. Do you see that?

15 A. Yes, sir.

16 Q. Did you have any role in preparing this  
17 information, sir?

18 A. No, sir.

19 Q. Okay. Did you ever talk to Mr. Sherl about  
20 his correspondence to the DEA?

21 A. No, sir.

22 Q. What about Mr. Mullin?

23 A. No, sir.

24 Q. Okay. Were you aware that Mr. Mullin was --  
25 had sent this to the United States Department of

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1 Justice Drug Enforcement Administration in 2010?

2 A. I'm sorry, I didn't hear the first part of  
3 the question.

4 Q. Were you aware that Mr. Mullin had sent this  
5 to the United States Department of Justice in 2010?

6 A. No, sir.

7 Q. Do you see on the second page of the  
8 document, additional information, it states: The  
9 July 2010 review of the June 2010 ordering of C2s by  
10 Walmart Pharmacies did not identify any as to being  
11 outside the normal ordering practices?

12 Do you see that?

13 A. Yes, sir.

14 Q. Do you agree with that statement, sir?

15 A. Yes, sir.

16 Q. And what's the basis for your agreement?

17 A. I mean, because we were following the  
18 policies and procedures, so -- I mean.

19 Q. Well, if Walmart had made any cuts to any  
20 orders in 2010, would that statement be true?

21 (Discussion off the record.)

22 A. I mean, but depends on the -- if we did cut  
23 one, I mean, it would be why would we cut it and --  
24 I mean, I don't know that it would have been outside  
25 the normal order -- order -- ordering practices.

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1 Q. What would be another reason Walmart would  
2 cut an order?

3 MR. MAZZA: Sorry, can you repeat that,  
4 Zach?

5 MR. BOWER: Sure.

6 Q. What would be another reason Walmart would  
7 cut an order?

8 A. Well, if a store meant to order two bottles,  
9 but they ordered 20 bottles because they  
10 accidentally hit a zero, and we called and asked the  
11 store, and they said, no, we only wanted two, we  
12 didn't mean to order 20, and we cut that to two, I  
13 don't personally consider that outside their normal  
14 ordering practices.

15 Q. Okay. Other than a typographical error,  
16 what would be any other example for a reason an  
17 order would be cut that was not outside the normal  
18 ordering practices? Can you think of any?

19 A. I mean, if it was an oxycodone 30 that was  
20 over 20, we would have cut it to 20.

21 Q. And it would be your opinion, sir, that that  
22 wasn't -- was not outside of the normal ordering  
23 practices?

24 A. It was -- I don't know if it was outside  
25 their normal ordering practices. I -- that was the

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1 guidelines we had to do, so --

2 Q. And Walmart --

3 A. -- that's what I did.

4 Q. -- and Walmart imposed those guidelines to  
5 comply with the DEA's requirement that it cut  
6 suspicious orders, correct?

7 A. I don't know why they gave me that  
8 direction. That's just the direction they gave me,  
9 so that's what I did.

10 Q. Well, were those guidelines part of  
11 Walmart's suspicious order monitoring policy?

12 A. They were part of my policies and procedures  
13 for handling C2 drugs.

14 Q. Sir, was the guideline which required you to  
15 cut oxy-30s to 20 part of Walmart's suspicious order  
16 monitoring policy?

17 A. Well, it was never given to me that this  
18 is -- it wasn't -- it wasn't presented to me that  
19 way. It was just that if the order is over this,  
20 just cut it.

21 Q. Do you know from what database Mr. Mullin or  
22 Mr. Sherl may have pulled this data that's reflected  
23 in Exhibit 27?

24 A. No, sir.

25 Q. We'd have to -- we'd have to ask them that

<p style="text-align: right;">Page 266</p> <p>1 question?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Sir, in your experience at Walmart, did</p> <p>4 Walmart ever conduct internal or external audits of</p> <p>5 their opioid sales to identify patterns regarding</p> <p>6 suspicious orders or diversion?</p> <p>7 MR. MAZZA: Objection; foundation.</p> <p>8 A. I don't know of any audits.</p> <p>9 Q. Are you aware of any efforts to identify</p> <p>10 patterns regarding suspicious orders or diversion</p> <p>11 made by Walmart?</p> <p>12 A. I'm sorry, could you repeat, please?</p> <p>13 Q. Sure. Are you aware of any efforts made by</p> <p>14 anyone at Walmart to identify suspicious orders or</p> <p>15 diversion of opioid products?</p> <p>16 A. I mean, when I was on the POM Team, that's</p> <p>17 what I did, was look for orders of interest and send</p> <p>18 them -- those over to the Compliance Team for</p> <p>19 review.</p> <p>20 Q. Do you agree that Walmart had the duty to</p> <p>21 report suspicious orders?</p> <p>22 A. I mean, I don't know what their duty to do</p> <p>23 was.</p> <p>24 Q. Do you know whether Walmart had any such</p> <p>25 duty, sir?</p>	<p style="text-align: right;">Page 268</p> <p>1 knowing that the drug is addictive.</p> <p>2 Q. You agree they are considered dangerous,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Was part of Walmart's suspicious order</p> <p>6 monitoring program to verify the information it</p> <p>7 learned when talking to the pharmacist --</p> <p>8 pharmacists?</p> <p>9 MR. MAZZA: Objection; form.</p> <p>10 Q. In other words, let me -- let me try to put</p> <p>11 it in your own words. Before, you gave us an</p> <p>12 example when you called the pharmacy and asked about</p> <p>13 the order that you had considered to be potentially</p> <p>14 suspicious. And the pharmacy explained that the</p> <p>15 reason for the ordering was because there was a</p> <p>16 nursing home located nearby, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And that -- you called that pharmacy as part</p> <p>19 of your duties and responsibilities in monitoring</p> <p>20 for suspicious orders, correct?</p> <p>21 A. Yes, sir.</p> <p>22 MR. BOWER: I think I'm done. Let's just go</p> <p>23 off the record for a minute.</p> <p>24 MR. MAZZA: Sure.</p> <p>25 THE VIDEOGRAPHER: Going off the record.</p>
<p style="text-align: right;">Page 267</p> <p>1 A. I don't know.</p> <p>2 Q. Do you know whether or not Walmart had a</p> <p>3 duty to report orders that it had cut?</p> <p>4 A. I don't know that -- I don't know if they</p> <p>5 had a duty to do that.</p> <p>6 Q. Sir, are you aware of anyone at Walmart ever</p> <p>7 looking at -- looking at whether there was an</p> <p>8 increase in opioid sales over the past 10 years?</p> <p>9 A. I'm sorry, the first part of that I didn't</p> <p>10 catch.</p> <p>11 Q. Are you aware of anyone at Walmart ever</p> <p>12 looking at whether there was an increase in opioid</p> <p>13 sales over the past 10 years?</p> <p>14 A. No, sir.</p> <p>15 Q. What about over the past 20 years?</p> <p>16 A. No, sir.</p> <p>17 Q. What about over the past five years?</p> <p>18 A. I don't think so.</p> <p>19 Q. Okay. Would you agree that Schedule II</p> <p>20 drugs have a high potential for abuse?</p> <p>21 A. I believe they have -- I believe personally</p> <p>22 they have a -- they can be abused.</p> <p>23 Q. And what's that basis for your personal</p> <p>24 belief?</p> <p>25 A. Just what I hear on TV and, you know,</p>	<p style="text-align: right;">Page 269</p> <p>1 The time is 6:16.</p> <p>2 (Recess from 6:16 p.m. until 6:20 p.m.)</p> <p>3 THE VIDEOGRAPHER: We're back on record,</p> <p>4 beginning Media Number 9. The time is 6:20.</p> <p>5 BY MR. BOWER:</p> <p>6 Q. Sir, I just have a couple more questions for</p> <p>7 you today. I appreciate your time. I realize it's</p> <p>8 been a long day.</p> <p>9 Do you recall in March of 2017 giving a tour</p> <p>10 of DC6045 to a group from Health &amp; Wellness, legal</p> <p>11 and outside counsel?</p> <p>12 A. I don't remember specifically. I mean, we</p> <p>13 gave tours regularly to different people.</p> <p>14 (Abernathy Exhibit 29 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. BOWER:</p> <p>17 Q. Sir, you've been handed what's been marked</p> <p>18 Exhibit 29, which is an e-mail chain attaching an</p> <p>19 Over 20 Report. And the folks on the chain are</p> <p>20 yourself, Ramona Sullins, Chad Ducote, and Nick</p> <p>21 Tallman, and the date is March 30, 2017. The Bates</p> <p>22 number is 1126.</p> <p>23 Do you see that, sir?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Take a moment to review that. I'm going to</p>



<p style="text-align: right;">Page 270</p> <p>1 have some questions on your e-mail to Chad and the          2 attached document.          3 My first question, sir -- and keep          4 reviewing, I just want to point you in the direction          5 I'm going -- is: Do you recall what the concerns          6 were that were being raised by Florida and West          7 Virginia? Do you know what the concerns were, sir?          8 A. I don't remember the document, but I          9 don't -- I don't know Florida and West Virginia. I          10 don't understand.          11 Q. Well, this is an e-mail from yourself to          12 Mr. Ducote and Ramona Sullins and Nick Tallman,          13 right, sir?          14 A. Yeah.          15 Q. These are your words, right?          16 A. Yes.          17 Q. You write: Before the SOM program there is          18 an issue with oxycodone 30mg in which Kristy S --          19 that's Kristy Spruell, right?          20 A. Yes.          21 Q. -- had 6045 cut all orders of oxy-30 to 20          22 bottles.          23 Do you see that?          24 A. Yes, sir.          25 Q. Do you know what the basis for that</p>	<p style="text-align: right;">Page 272</p> <p>1 Q. Do you ever recall Ramona having a          2 discussion about why you were doing it?          3 A. No, sir.          4 Q. Do you have any idea why you wrote this          5 e-mail?          6 A. I don't remember why I wrote it.          7 Q. Do you see in the next page, you write:          8 Dena is gathering data from current SOM program for          9 how many alerts, how many sent to DC, how many          10 suspicious?          11 Do you see that?          12 A. Yes, sir.          13 Q. What does that refer to?          14 A. I'm -- I don't know.          15 Q. Well, do you know what PC refers to, sir?          16 A. Practice compliance.          17 Q. So Dena is gathering data from the current          18 SOM program for how many alerts, right, how many of          19 those alerts were sent practice compliance and how          20 many were suspicious, correct?          21 A. Yes.          22 Q. Where would she look to gather that data?          23 A. She would probably use Archer for that.          24 Q. Okay. How far back does the data in Archer          25 go?</p>
<p style="text-align: right;">Page 271</p> <p>1 statement was?          2 A. I don't know what the basis was for it.          3 Q. Well, as you sit here today, you have no          4 recollection what the concerns were that were being          5 raised by Florida and West Virginia, do you?          6 A. To the best of my knowledge, I don't.          7 Q. Do you know what the SOM program you're          8 referring to there is? What program is being          9 referred to?          10 A. It looks like the Over 20 Report, where we          11 were cutting the oxycodone 30 from -- anything over          12 20 bottles, we were cutting it to 20.          13 Q. Right. And that program was the result of          14 concerns being raised by Florida and West Virginia,          15 correct?          16 MR. MAZZA: Objection; form.          17 A. I don't know -- I don't know why we were          18 doing that.          19 Q. Who -- when did you first hear about that          20 SOM program being discussed or that it was going to          21 be implemented?          22 MR. MAZZA: Same objection.          23 A. I mean, when we got the direction to do          24 that, that's when I found out that that's what we          25 need to do.</p>	<p style="text-align: right;">Page 273</p> <p>1 MR. MAZZA: Objection; foundation.          2 A. I don't know how far it went back.          3 Q. Do you know who would know the answer to          4 that question?          5 A. I don't know.          6 Q. Do you know whether Dena would know?          7 A. I don't know if she would know or not.          8 Q. Do you know whether Ramona would know?          9 A. I don't know that, either.          10 Q. Do you know any -- whether anyone at Walmart          11 would know?          12 A. I don't -- I don't know. Archer was just an          13 application we used. I don't know who owned it, who          14 created it, where -- the information that they used.          15 It was just an application we used to enter stuff          16 into.          17 Q. But Walmart provided the data to use that          18 application, right?          19 A. Walmart -- the information that I gathered          20 from my research on flagged orders went into Archer,          21 but it was my understanding they used Archer for          22 other things, as well.          23 Q. And --          24 A. It was a compliance tool that they used.          25 Q. Do you have any understanding as to what</p>

<p style="text-align: right;">Page 274</p> <p>1 Walmart data was loaded into Archer?</p> <p>2 A. That's -- all I know is the data that I put</p> <p>3 into it.</p> <p>4 Q. What data did you put into it?</p> <p>5 A. The information that I got from reviewing</p> <p>6 orders.</p> <p>7 Q. You put -- you physically put that</p> <p>8 information into Archer yourself?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And how would you do that?</p> <p>11 A. I would log into the Archer application. I</p> <p>12 would click on, like, new -- I forget the</p> <p>13 terminology, but I'd create a new entry, and then I</p> <p>14 would key information into it.</p> <p>15 Q. And this was the time you were at the home</p> <p>16 office?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did you do that at any other time?</p> <p>19 A. No, sir.</p> <p>20 Q. Did you do -- did you enter this information</p> <p>21 for every order you reviewed?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Including ordered --</p> <p>24 A. Well, I'm sorry. For controls --</p> <p>25 Q. Right.</p>	<p style="text-align: right;">Page 276</p> <p>1 Exhibit 27, the second page.</p> <p>2 MR. MAZZA: Can you give me a copy of 27?</p> <p>3 Thanks.</p> <p>4 Q. This is the -- a report that Mr. Sherl faxed</p> <p>5 to the DEA on a monthly basis. Do you see that? Do</p> <p>6 you remember when Mr. Bower asked you about this?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. This one here, if you look at the</p> <p>9 date, July 23rd, 2010, as you sit here this evening,</p> <p>10 do you know whether there were any orders cut in</p> <p>11 July 2010 from DC 45?</p> <p>12 A. No, sir.</p> <p>13 Q. Mr. Abernathy, to the best of your</p> <p>14 knowledge, did any shipment from Walmart lead to the</p> <p>15 opioid crisis?</p> <p>16 A. No, sir.</p> <p>17 MR. BOWER: Objection to form.</p> <p>18 Q. Did any contribute to the opioid crisis?</p> <p>19 MR. BOWER: Objection to form.</p> <p>20 A. No, sir.</p> <p>21 Q. When you were on the POM Team, we talked</p> <p>22 about the thresholds under the Reddwerks program?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Right. Do you recall that?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 275</p> <p>1 A. -- we did.</p> <p>2 Q. You entered this information for every order</p> <p>3 that you reviewed for controls?</p> <p>4 A. Yes.</p> <p>5 Q. So some days, for example, you would enter</p> <p>6 this information for many orders, correct?</p> <p>7 A. However many I had, yes, sir.</p> <p>8 MR. BOWER: Okay. Nothing further.</p> <p>9 MR. MAZZA: Okay. We can go -- let's go off</p> <p>10 the record right now.</p> <p>11 THE VIDEOGRAPHER: Going off record, the</p> <p>12 time is 6:30.</p> <p>13 (Recess from 6:30 p.m. until 6:53 p.m.)</p> <p>14 THE VIDEOGRAPHER: We are going on record,</p> <p>15 beginning of Media File Number 10. The time is</p> <p>16 6:53.</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. MAZZA:</p> <p>19 Q. Mr. Abernathy, just a very few follow-up</p> <p>20 questions to Mr. Bower's examination.</p> <p>21 In your time at 6045, did you only</p> <p>22 distribute controlled substances to Walmart</p> <p>23 Pharmacies?</p> <p>24 A. Yes.</p> <p>25 Q. And I'm showing you what's been marked as</p>	<p style="text-align: right;">Page 277</p> <p>1 Q. And is it -- was it your testimony that the</p> <p>2 thresholds were based on the store and item and</p> <p>3 history?</p> <p>4 MR. BOWER: Objection to form.</p> <p>5 A. Yes, sir.</p> <p>6 Q. And you testified that you didn't have any</p> <p>7 hand in designing the threshold; is that correct?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you know the -- the basic nature of the</p> <p>10 thresholds that were in place in the Reddwerks</p> <p>11 program when you were on the POM Team?</p> <p>12 MR. BOWER: Objection to form.</p> <p>13 A. I'm sorry, can you ask again?</p> <p>14 Q. Yes. Do you know the basic nature of the</p> <p>15 thresholds that were in place when you were on the</p> <p>16 POM Team for the Reddwerks program?</p> <p>17 MR. BOWER: Same objection.</p> <p>18 A. I didn't design them. The basics that I</p> <p>19 knew was store -- it was based on store, item, and</p> <p>20 they were different for each store.</p> <p>21 Q. So with that definition, an order for oxy-30</p> <p>22 from a store in Michigan, could that order have a</p> <p>23 different threshold than an order for something like</p> <p>24 hydro 5 from a store in Connecticut?</p> <p>25 A. Yes, sir.</p>

<p style="text-align: right;">Page 278</p> <p>1 MR. MAZZA: Nothing further.</p> <p>2 MR. BOWER: I just have two questions.</p> <p>3 MR. MAZZA: You want to just stay there?</p> <p>4 MR. BOWER: Yeah, I'll just stay here.</p> <p>5 REDIRECT EXAMINATION</p> <p>6 BY MR. BOWER:</p> <p>7 Q. Mr. Mazza asked you a question about the</p> <p>8 distribution of 6045, correct, sir?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Did that distribution also include C2</p> <p>11 opioids to Sam's Club?</p> <p>12 A. For what time period?</p> <p>13 Q. For any time period when you were at DC6045.</p> <p>14 A. When I first started at 6045, we did ship to</p> <p>15 Sam's Club.</p> <p>16 Q. And when did that shipping to Sam's Club</p> <p>17 stop?</p> <p>18 A. I don't remember the exact date.</p> <p>19 Q. Do you remember approximately when?</p> <p>20 A. I don't. I don't. I know we stopped</p> <p>21 shipping to Sam's Club, and they started shipping</p> <p>22 to -- I mean, getting their stuff from</p> <p>23 AmerisourceBergen.</p> <p>24 Q. And just a couple questions on the POM Team.</p> <p>25 Who oversaw the POM Team?</p>	<p style="text-align: right;">Page 280</p> <p>1 CERTIFICATE</p> <p>2 I, SUSAN D. WASILEWSKI, Registered</p> <p>3 Professional Reporter, Certified Realtime Reporter,</p> <p>4 and Certified Realtime Captioner, do hereby</p> <p>5 certify that, pursuant to notice, the deposition of</p> <p>6 JEFF ABERNATHY was duly taken on Thursday,</p> <p>7 November 15, 2018, at 9:37 a.m, before me.</p> <p>8 The said JEFF ABERNATHY was duly sworn by me</p> <p>9 according to law to tell the truth, the whole truth</p> <p>10 and nothing but the truth and thereupon did testify</p> <p>11 as set forth in the above transcript of testimony.</p> <p>12 The testimony was taken down stenographically by me.</p> <p>13 I do further certify that the above deposition is</p> <p>14 full, complete, and a true record of all the</p> <p>15 testimony given by the said witness, and that a</p> <p>16 review of the transcript was requested.</p> <p>17</p> <p>18 _____</p> <p>19 Susan D. Wasilewski, RPR, CRR, CCP, CMRS, FPR, CCR</p> <p>20 (The foregoing certification of this transcript does</p> <p>21 not apply to any reproduction of the same by any</p> <p>22 means, unless under the direct control and/or</p> <p>23 supervision of the certifying reporter.)</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 279</p> <p>1 A. Chad Ducote.</p> <p>2 Q. And who did the POM Team report to?</p> <p>3 A. Chad Ducote.</p> <p>4 Q. Do you know who Mr. Ducote reported to?</p> <p>5 A. I do not.</p> <p>6 MR. MAZZA: All right.</p> <p>7 THE VIDEOGRAPHER: All right. This</p> <p>8 concludes today's deposition, we're going off</p> <p>9 record. The time is 6:58.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. MAZZA: We reserve the witness's</p> <p>12 signature and a pending review, and we ask that</p> <p>13 it be marked highly confidential, also pending</p> <p>14 review.</p> <p>15 (Whereupon, the deposition concluded at</p> <p>16 6:58 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 281</p> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3</p> <p>4 Please read your deposition over carefully</p> <p>5 and make any necessary corrections. You should</p> <p>6 state the reason in the appropriate space on the</p> <p>7 errata sheet for any corrections that are made.</p> <p>8</p> <p>9 After doing so, please sign the errata sheet</p> <p>10 and date it. It will be attached to your</p> <p>11 deposition.</p> <p>12</p> <p>13 It is imperative that you return the</p> <p>14 original errata sheet to the deposing attorney</p> <p>15 within thirty (30) days of receipt of the deposition</p> <p>16 transcript by you. If you fail to do so, the</p> <p>17 deposition transcript may be deemed to be accurate</p> <p>18 and may be used in court.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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